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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 270.

ROBERT B. PRENTIS, HENRY C. STUART, AND JOSEPH E. WILLARD, INDIVIDUALLY AND AS CONSTITUTING THE STATE CORPORATION COMMISSION OF VIRGINIA, AND R. T. WILSON, CLERK OF THE STATE CORPORATION COMMISSION OF VIRGINIA, APPELLANTS,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

FILED FEBRUARY 18, 1907.

(21,609.)

(21,009.)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 15, 1908.

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States, to Atlantic Coast Line Railroad Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the city of Washington, on the 10th day of February, A. D., 1908, pursuant to an appeal, duly allowed by the Circuit Court of the United States for the Eastern District of Virginia, and filed in the clerk's office of said Court on the 26th day of December, A. D., 1907; in a cause wherein Robert R. Prentis, (Substituted defendant for Beverley T. Crump), Henry C. Stuart and Joseph E. Willard, individually, and as constituting the State Corporation Commission of Virginia, and R. T. Wilson, Clerk of said State Corporation Commission of Virginia, are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable J. C. Pritchard, Judge of the Circuit Court of the United States for the Eastern District of Virginia, this 14th day of January, in the year of our Lord one thousand nine hundred and eight, and of our Independence the 132nd year.

J. C. PRITCHARD,
United States Circuit Judge.

Service of the above citation is hereby admitted this 18th day of January, 1908.

WM. B. McILWAINE,
Attorney for Appellee.

(Petersburg, Virginia.)

b [Endorsed:] No. 577. Circuit Court of the U. S. Eastern District of Virginia. In equity. Atlantic Coast Line Railroad Company, Complainant, *vs.* Robert R. Prentis, (Substituted defendant for Beverley T. Crump), and others, Defendants. Citation. Filed this — day of ——, 190–. ——— ———, Clerk.

1 *Transcript of Record.*

UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

At a Circuit Court of the United States for the Eastern District of Virginia, begun and held at the Court Rooms in the Custom House, in the City of Richmond, Virginia, on the first Monday in October, being the seventh day of the same month, in the year of our Lord one thousand nine hundred and seven.

Present: The Honorable J. C. Pritchard, Judge of the Circuit Court of the United States for the Eastern District of Virginia.

Among other were the following proceedings, to-wit:

In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted defendant for Beverley T. Crump), HENRY C. STUART, and JOSEPH E. WILLARD, Individually, and as Constituting the State Corporation Commission of Virginia, and RICHARD T. WILSON, as Clerk of the State Corporation Commission of Virginia, Defendants.

2 *Bill of Complaint.*

Filed May 14th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia, To wit:

In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,
versus
BEVERLEY T. CRUMP, H. C. STUART, JOS. E. WILLARD, and R. T. WILSON, Defendants.

To the Honorable Judges of said Court:

The bill of complaint of Atlantic Coast Line Railroad Company, a corporation of the State of Virginia, duly organized and existing under and by virtue of the laws of that State, having its legal principal office in the City of Petersburg, in the State of Virginia, and being a citizen of said State, against Beverley T. Crump, Henry C. Stuart, Joseph E. Willard, and R. T. Wilson, defendants, all of said defendants being likewise citizens of the State of Virginia.

And thereupon your complainant says:

1. That the complainant, the Atlantic Coast Line Railroad Company, is a railroad company duly incorporated, organized, existing and doing business pursuant to, under and by virtue of the Act of the General Assembly of Virginia, passed March 14th, 1836, entitled "An act incorporating the stockholders of the Richmond and Petersburg Railroad Company," and under certain other acts of said General Assembly of Virginia, which will appear by a duly certified copy of the said acts, constituting the charter of the said Atlantic Coast Line Railroad Company, which is herewith filed as a
3 part of this bill, marked Exhibit "A," and the said certified copy is made by the laws of the State of Virginia conclusive evidence of the existence of such corporation; that pursuant to clause 4 of the one of said acts approved January 12th, 1900, the name of complainant corporation was shortly thereafter changed to its present name, viz.: "Atlantic Coast Line Railroad Company"; that complainant became a railroad corporation, duly organized, shortly after March 14th, 1836, and has ever since been and is now a rail-

road corporation existing and doing business under the said acts of the General Assembly of Virginia and the laws of Virginia, and now and for many years, as authorized by law, owning, operating and controlling by a connected mileage a system of railroads in the States of Virginia, North Carolina, South Carolina, Georgia, Florida, and Alabama, the aggregate mileage of which is 4,333.44 miles, and of which the mileage in Virginia is 128.07 miles; of the mileage in Virginia, 73.42 is main line from Richmond via Petersburg to the North Carolina line, and 34.38 miles is main line from Pinner's Point to the North Carolina line, and branches are: James River branch, 4.55 miles; Petersburg branch, 6.51 miles; Pig's Point branch, Norfolk County, 6.53 miles; branch to S. & R. R. R., Norfolk County, 1.13 miles; and branch to Bennett's Pasture, Nansemond County, 1.55 miles.

2. That the complainant is, and for many years has been, engaged in doing an intrastate business as a common carrier of freight and passengers in the State of Virginia, and, in addition, is, and for many years has been, engaged in doing as a common carrier of freight and passengers a large interstate business in said State of Virginia, and in and between said State and the other States aforesaid, and other States of the United States, and in and between other States and Territories of the United States, and also is, and for many years has been, engaged in said State and the other States aforesaid in foreign commerce with other countries.

3. The complainant shows that there has been established in the State of Virginia by a provision of the Constitution of that State a commission, denominated in said Constitution the State Corporation Commission. The constitutional provisions referred to, establishing such commission, are contained in sections of the Constitution of Virginia numbered 155 and 156, herewith filed as a part of this bill and marked Exhibit "B," to which special reference is hereby made.

The complainant respectfully shows that the said provisions in the Constitution of the State of Virginia seek to confer upon
4 the said commission administrative, executive, legislative and judicial powers and functions in respect to the same matter, and, as applied and proposed to be applied to this complainant and to its property in the premises, do not constitute due process of law, nor afford to this complainant the equal protection of the laws, within the meaning of the Fourteenth Amendment to the Constitution of the United States.

This complainant further and additionally pleads and shows that section five of the Bill of Rights of Virginia, which in the Constitution of that State is declared to be "the basis and foundation of government," provides as follows:

"That the legislative, executive and judicial departments of the State should be separate and distinct:"

and the 39th section of the Constitution of Virginia provides:

"Except as hereinafter provided, the legislative, executive, and judiciary departments shall be separate and distinct, so that neither

exercise the powers properly belonging to either of the others, nor any person exercise the power of more than one of them at the same time."

The single exception alluded to in section 39 of said Constitution embraces matters relating to the performance by transportation and transmission companies of their public duties and their charges therefor, in regard to which alone the separation of the legislative, executive and judicial departments is by the Constitution of Virginia denied.

While, therefore, for the protection of every other interest in Virginia, a judicial tribunal is provided by the constitution and laws of that State which is not clothed with legislative and executive functions in respect to the matters in which it is required to exercise its judicial functions, and, therefore, by the law of its creation, is capable of judicial consideration and judicial action in respect to them, this, by the constitutional system of Virginia, is denied to transportation and transmission companies in respect to controversies arising about their public duties and their charges therefor. In respect to these, the said commission has been established by the Constitution, which seeks to impose, and, if valid, does impose upon the Commission the duty, or invest it with the power, of instituting proceedings before itself in respect to the public duties of transportation and transmission companies and their charges therefor, without any other party complainant except the Commission itself, of legislating thereon and making rules and orders in respect thereto, after the proceedings have been thus instituted before it by itself; of enforcing, as a court, compliance with the orders or requirements which it has made in the matters thus brought before it and thus legislated on or ruled upon, and, in the same matters, of adjudging or enforcing against the defendants the fines and penalties prescribed or authorized by the Constitution or by law.

This complainant respectfully submits that this Commission, by the law of its creation, is thus, and is otherwise, as will appear from the said Constitution, made incapable of the judicial consideration and judicial action in respect to the large interests above mentioned of transportation and transmission companies which due process of law requires; and in the knowledge that it has powers as a judicial tribunal to pass upon the validity of its acts in the other capacities referred to, it is put in a position of freedom from the usual and necessary restraints of legislative bodies in respect to matters about which it may legislate. In subjecting these large interests to a tribunal thus created, and denying to them the protection of judicial tribunals which are not clothed with legislative, administrative and executive functions in respect to matters in which they are called upon to exercise their judicial functions, such as are provided for every other interest in the State by the Constitution and laws of Virginia, and in subjecting them to the legislative power of this tribunal, unlimited and unchecked by the ordinary and orderly responsibility to an independent judicial tribunal, the said Constitution not only does not constitute, in respect to transportation and transmission companies, due process of law, but it likewise denies to

them the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States, which provides that no State shall deprive any person of its property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

And the complainant respectfully prays the benefit and protection of the said Fourteenth Amendment to the Constitution of the United States in respect to the action of the said Commission, hereinafter mentioned in this bill.

4. Acting under the alleged authority of sub-section (*b*) of section 156 of the Constitution of Virginia, aforesaid, the State Corporation Commission, on the thirty-first day of July, 1906, issued the following notice:

6 "*Notice.*

Office of the State Corporation Commission.

RICHMOND, VA., *31st Day of July*, 1906.

To the Several Steam Railroad Companies Doing Business in Virginia and all Persons Interested:

Take notice that the State Corporation Commission will, in the City of Richmond, on Thursday, the first day of November, 1906, at 12 o'clock noon, in accordance with the authority conferred by the Constitution of Virginia and the statutes enacted by the General Assembly of Virginia pursuant thereto, hear and consider any objections which may be urged against a rule, regulation, order or requirement of the Commission fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers over the line of any railroad company in this State, operated by steam, between points within the State of Virginia, said maximum rate to be observed whether the transportation be entirely over the line of one railroad company, or joint transportation over the lines of two or more companies; and whether the contract for transportation of a passenger or passengers be evidenced by an ordinary ticket between stations, by a mileage book or otherwise; the Commission to have, as authorized by law, the power and authority from time to time, and as often as circumstances may require, to change or revise the rate, or by rules, regulations and requirements to provide for the more convenient and expedient putting into effect and proper observance of said maximum rate. At the said hearing and consideration of the said maximum rate of two cents per mile, the method, time and extent of promulgation and putting into effect of the same will be heard and determined by the Commission, to the end that a maximum rate for passenger transportation may be put into effect and be made applicable to all steam railroad companies doing business in Virginia, and be properly observed by them in the transportation of passengers.

BEVERLEY T. CRUMP, *Chairman.*
H. C. STUART.
JOSEPH E. WILLARD.
Commissioners."

7 This notice was published once a week for four consecutive weeks in the Times-Dispatch, a newspaper of general circulation, published in the City of Richmond.

In accordance with said notice, the complainant appeared before the Commission on the first day of November, 1906, and filed an answer, a copy whereof is herewith filed as a part of this bill marked Exhibit "C," showing objections against the proposed maximum passenger rate of two cents per mile, and thereafter, in due course, introduced evidence before said Commission to show the reasons why the said maximum passenger rate of two cents per mile should not be established. Notwithstanding this, however, and notwithstanding the fact that the evidence before the Commission conclusively showed, as this complainant is advised, that the said maximum passenger rate of two cents per mile should not, in justice, and could not constitutionally, be established to govern the passenger rates of this complainant in the State of Virginia, and that to attempt to establish the same would amount to confiscation of this complainant's property, contrary to the Fourteenth Amendment to the Constitution of the United States, the said Commission on the twenty-seventh day of April, 1907, entered the following order:

"COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION

v.

STEAM RAILROAD COMPANIES.

In the Matter of Prescribing a Maximum Passenger Rate.

CITY OF RICHMOND, *27th Day of April*, 1907.

The State Corporation Commission having carefully considered all the proceedings herein, and all the testimony, exhibits and statements adduced and filed before it in this proceeding, and having put its conclusions in writing, which are made a part of the record herein, the Commission, in order to carry out its said conclusions, now makes the following order and regulations and prescribes the following maximum rates to be observed by all the steam railroad companies operating in the State of Virginia in the transportation of passengers.

1. It is ordered, that on and after the first day of July, 1907, the following steam railroad companies, viz.:

8 Norfolk & Western Railway Company,
Chesapeake & Ohio Railway Company,
Atlantic Coast Line Railroad Company,
Seaboard Air Line Railway Company,
Southern Railway Company,
Richmond, Fredericksburg & Potomac Railroad Company,
Washington Southern Railway Company,
New York, Philadelphia & Norfolk Railroad Company,
Virginia & Southwestern Railway Company,
Louisville & Nashville Railroad Company,

shall put into effect and observe a maximum rate of two cents per mile in the intrastate transportation of passengers in Virginia, said

maximum rate to be observed whether the transportation be entirely over the line of one of the said railroad companies or joint transportation over the lines of two or more companies; and on and after the said date it shall be unlawful for the said railroad companies, or any of them, to charge or collect a greater sum than two cents per mile for the transportation of passengers over the lines controlled and operated by them respectively, except as otherwise allowed in this order or from time to time by the State Corporation Commission.

2. It is ordered, That a maximum rate of two and one-half cents per mile for the intrastate transportation of passengers be fixed and prescribed to go into effect on and after the first day of July, 1907, on the following divisions, or branches, of the Southern Railway Company, which are now excepted from the operation of the maximum rate of two cents per mile hereinabove fixed.

Norfolk Division, extending from Pinners Point to Danville, 204 miles, exclusive of so much of the said division as may be in the State of North Carolina;

Franklin Branch, extending from Franklin Junction to Rocky Mount, 37 miles;

Claremont Branch, extending from James River Junction to Claremont, 50 miles.

From and after the said date it shall be unlawful for the
9 Southern Railway Company to charge or collect a greater sum than two and one-half cents per mile for the intrastate transportation of passengers over these divisions, or branches, unless otherwise directed or allowed by the Commission.

3. It is ordered, that on and after the first day of July, 1907, the following steam railroad companies, viz.:

Chesapeake Western Railway,
Cumberland Valley & Martinsburg Railroad Company,
Danville & Western Railway Company,
Indian Creek & Pound River Railroad Company,
Marion & Rye Valley Railway Company,
Nelson & Albemarle Railway Company,
Valley Railroad Company of Virginia,
Virginia-Carolina Railway Company,
Virginia Southern Railroad Company,
Winchester & Potomac Railroad Company,
Winchester & Strasburg Railroad Company,
Norfolk & Southern Railway Company,

shall put into effect and observe a maximum rate of three cents per mile in the intrastate transportation of passengers in Virginia, and on and after the said date it shall be unlawful for the said railroad companies, or any of them, to charge or collect a greater sum than three cents per mile for the transportation of passengers over the lines controlled and operated by them respectively, except as otherwise allowed from time to time by the State Corporation Commission.

4. It is ordered, that on and after the first day of July, 1907, the following steam railroad companies, viz.:

Big Sandy & Cumberland Railroad Company,
Black Mountain Railway Company,
Interstate Railroad Company,

Lick Creek & Lake Erie Railroad Company,
Mt. Airy & Eastern Railway Company,
New River, Holston & Western Railroad Company,
Potomac, Fredericksburg & Piedmont Railroad Company,
Surry, Sussex & Southampton Railway Company,
Tidewater & Western Railroad Company,
Virginia Anthracite Coal and Railway Company,
Virginia & Kentucky Railway Company,
Wise Terminal Company,

shall put into effect and observe a maximum rate of three and one-half cents per mile in the intrastate transportation of passengers in Virginia, and on and after the said date it shall be unlawful for the said railroad companies, or any of them, to charge or collect a greater sum than three and one-half cents per mile for the transportation of passengers over the lines controlled and operated by them respectively, except as otherwise allowed from time to time by the State Corporation Commission.

5. It is further ordered, That in applying the foregoing maximum passenger rates prescribed for the several railroads in Virginia, the railroad companies may charge and collect a minimum rate of ten cents per passenger for any single haul.

6. The payment of fares subject to the maximum rate herein prescribed shall entitle the passenger to the same transportation of baggage as now allowed by the carriers under and in connection with the present rates, and no steam railroad company operating in Virginia shall change or alter the rules governing the rights of passengers with respect to the transportation of baggage in Virginia, without the consent of the Commission first obtained.

7. Steam Railroad Companies operating in Virginia may charge and collect in addition to regular ticket rates the fixed sum of ten cents from all cash fare passengers who had been afforded reasonable opportunity for purchasing ticket before boarding train; provided that the Conductor shall in all such cases deliver to passengers a receipt for the amount collected redeemable at any ticket office of the Company within thirty days from date of issue.

It is ordered, That the Clerk of the Commission do forwith publish this order in full in one of the newspapers of general circulation published in the City of Richmond, once a week for four successive weeks, as required by law."

11 Under the constitutional system of Virginia, the said order of the Commission cannot take effect until the same is published once a week for four consecutive weeks in some newspaper of general circulation published in the City of Richmond, and, accordingly, the said Commission, in said order, ordered that the Clerk of the Commission do forthwith so publish said order, and unless prohibited by the order of this Honorable Court he will at once proceed to do so.

5. The effect of the said order of the State Corporation Commission of Virginia; if enforced, would, as will appear from the considerations now about to be set forth, be to deprive the complainant of its property, at least to the extent of $17,000 per annum, without

just compensation and without due process of law, and to deny to it the equal protection of the laws, contrary to the Fourteenth Amendment of the Constitution of the United States, the benefit and protection of which the complainant respectfully sets up and claims.

The existing passenger rates and charges in effect upon this complainant's lines in the State of Virginia, and applicable to intrastate business in said State, are not higher than three cents a mile, and are not higher than is just and reasonable, whether considered in respect to the value of the property used by this complainant in the public intrastate service in Virginia, or in respect to the value of the service rendered to the travelers upon its lines.

The complainant shows that the effect of the rates set forth in the said order of the Commission, and now proposed to be put into effect by it upon the business of this complainant, between points both of which are in the State of Virginia, and which does not pass out of said State *en route*, for the year ended June 30th, 1905, is as follows:

Complainant's total gross intrastate earnings in Virginia, from all sources, under the existing classifications, rates and charges, for the fiscal year which ended June 30th, 1905, were as follows:

Gross freight earnings			$133,419.31
" passenger "	$117,242.33		
" mail "	15,727.18		
" express "	19,698.87		
" miscellaneous "	22,311.71		
		174,980.09	
Total gross intrastate earnings			$308,399.40
12 Brought forward			$308,399.40
The minimum cost of earning this gross local or intrastate revenue is not less than 75% of the total, which makes as a minimum cost applicable			231,299.55
Maximum net earnings from same (without deductions of taxes, cost of improvements and betterments not capitalized, or interest charges or dividends)			77,099.85

The taxes for the year ending June 30th, 1905, in Virginia, charged to and paid by complainant, were $47,223.26; of this sum 1% on the gross intrastate earnings, being the franchise tax thereon, and not less than two-thirds of the taxes on the physical property, are properly chargeable to the intrastate earnings, just as if complainant did no interstate business and had its lines built and equipped to do intrastate business only; such taxes to be deducted would be as follows:

Total taxes in Virginia paid, for year..	$47,223.26	
Deduct the franchise tax paid for year.	6,720.88	
Leaving taxes on physical and tangible property	40,502.38	
Two-thirds of this, properly chargeable to intrastate plant and equipment is..	27,001.59	
Add 1% franchise tax on gross intrastate earnings	3,083.99	
Taxes paid on intrastate property....	$30,085.58	30,085.58
Actual net intrastate earnings, after deducting taxes		47,014.27
13 Brought forward		$47,014.27
Deduct reduction in revenue consequent upon proposed fixing of maximum passenger rate (intrastate) at two cents per mile by applying rate to intrastate passenger business in Virginia for year 1904-5		17,000.00
		30,014.27
Add 1% franchise tax on amount of reduction of $17,000 in gross earnings		170.00
Balance total net intrastate earnings, after paying taxes, if proposed reduction in passenger rates shall be put into effect (without paying any interest on bonded debt or dividends and without allowance for present increased cost of operation, or for any improvements or betterments)		$30,184.27

The complainant further shows that the effect of the establishment of the proposed passenger rates and charges would not be limited to the intrastate business in Virginia of this complainant, but would inevitably affect the interstate business of this complainant, and impair and diminish the revenues derived therefrom. This inevitably follows from the fact that all, or nearly all, of its interstate passenger rates within the State of Virginia, are made, and necessarily made, on a combination of locals, or by the use of locals as factors, and, where the local rate within the State of Virginia is reduced, the inevitable effect upon the revenues of this complainant from its interstate business would be a reduction, and accordingly the total loss which this complainant would have to incur in the event that the proposed passenger rates and charges are made effective would not be represented merely by the figures above given, but a very consider-

able and appreciable loss would necessarily be added thereto, growing out of the reduction on its interstate business, as aforesaid.

The complainant further shows that there is, in respect to this complainant's property, as in respect to all other classes of property in the State of Virginia, whether owned by individuals or
14 corporations, a difference between the commercial and tax assessment value, the commercial value being, in respect to all classes of property, greater than the value assessed for purposes of taxation, and while this complainant does not admit, but, on the contrary, expressly denies, that the tax assessment value is as great as the value which should be considered for the purpose of determining its right to make reasonable earnings out of, and reasonable returns on, the property used by it in doing its intrastate business as a common carrier in Virginia, and performing the public service required of it as such, the complainant is advised that the State of Virginia, having made the assessment for the purposes of taxation upon the complainant's property in said State, cannot deny that its property in that State is worth at least the amount of said assessment, and in fact, its property in Virginia is worth more than the amount of said assessment and it would cost more to reproduce it. If, however, the earnings which it can make under the proposed passenger rates and charges are estimated only in reference to the said assessed value of its said property made by the State of Virginia for the purposes of taxation, the complainant avers that the proposed rates and charges will not permit it to earn reasonable profits and enjoy reasonable returns, even upon that valuation, and such rates and charges will deprive it of the legitimate use of its property.

Now the *ad valorem* assessment by the State of Virginia upon the physical property only of this complainant, for the year ending June 30th, 1905, was	$2,883,199.00
Not less than two-thirds of this represents the value of the physical property if built, equipped and used for intrastate business only, and is	$1,922,133.00
The franchise tax of $3,083.99 on the intrastate gross earnings, capitalized at 35 cents on the $100, would produce	881,600.00
Total tax valuation for intrastate road	$2,803,733.00

Upon this tax valuation of $2,803,733.00 the net Virginia intrastate earnings of $47,014.27, for year ending June 30th, 1905, under existing classification and rates (no bond interest or stock dividends being allowed for) now yields complainant only 1.67⅔%; and, upon the same valuation, the Virginia intrastate net earnings, under the proposed passenger rates, being $30,184.27, above shown, would yield to complainant only 1.07⅔%.

If the franchise taxes on the intrastate earnings, and only
15 one-third of the taxes on physical property in Virginia, were charged to the intrastate earnings, making the taxes charged

against the intrastate road $16,584.78, and the intrastate net earnings $39,184.70, the result would be, upon the basis of the proposed passenger rates 1.39 + % income only upon the value of the property as an intrastate road.

Complainant respectfully shows that, upon investigation, it will be found that practically the relative average values of the physical property essential to the conduct of intrastate and interstate railroad business is two-thirds for intrastate and one-third for interstate business—that is, a properly built and equipped road for intrastate business only will cost two-thirds of a sum sufficient to build and equip the same road for both interstate and intrastate business; and complainant further shows that, after making every proper and just deduction and allowance for the difference in value and cost of the physical properties, essential to operate an intrastate, and an interstate as well as intrastate, road, the allegation as to relative cost just hereinbefore made, is justified by the facts as to the property values and cost thereof of complainant in Virginia; and complainant shows that the cost of reproducing the physical property in Virginia of complainant, including rolling stock essential and used in 1905, and as the same was then made, equipped and used for both intrastate and interstate business, would be at least the sum of $5,549,221.33; and that the cost of reproducing the same, making due and fair allowance for difference under requisite requirements in all respects, for use and operation of an intrastate railroad only, would be at least $3,711,481.00, the figure last named being only $12,000.12 in excess of two-thirds of the above-stated total cost of $5,549,221.33 for an interstate and intrastate road; and complainant further shows that it will adduce evidence proving the correctness of these estimates of cost and value.

And complainant further shows, that upon the basis last named of the cost and value of its physical property in Virginia, considered as an intrastate railroad only, the net revenue for 1905 from intrastate earnings (after the payment of taxes, but without paying any interest on bonds or dividends on stock) under the present classification and freight and passenger rates is only 1.266%, that is, on property value of $3,711,481.00, and net earnings of $47,014.27; and if the same property value be taken, and the net earnings of $30,184.27, under the proposed passenger rates, be used, the net revenue to be yielded to this complainant will be only 81-100 of one per cent.

Complainant further shows, that if it owned no physical property in Virginia, except its road-bed and track of 128.07 miles, dis-
16 carding all equipment and all other property, the value of the same at $10,000.00 per mile, (which is less than one-third of its actual valuation, including franchise, for taxation), would be $1,280,700.00, upon which the said net intrastate earnings of $30,184.27 would yield a net revenue of 2.35 + %.

Upon all these various valuations, the earnings, even at present rates and classification, from complainant's intrastate business in Virginia, amount to very small and unreasonable percentages upon cost or value, and those percentages will be, as shown, still smaller under the proposed classification and rates, and this without allowing

anything for payment of interest upon bonded indebtedness or dividends on stock. Neither of the returns is a reasonable profit upon the invested capital.

Complainant further shows, (as of June 30th, 1905,) that its mortgage bonded debt upon its physical property in Virginia was.....	.....	$1,246,515.70
and that its fixed indebtedness by (4% and 7%) Certificates of Indebtedness (not secured by mortgage) is $4,939.91 per mile of its entire line, so that on its 128.07 miles in Virginia there is applicable	.....	632,654.27
		$4,879,169.90
on which the annual interest charge is:		
on the bonds.....	$207,420.59	
on the certificates, over.....	25,306.17	
		232,726.76
The earnings from intrastate traffic in Virginia should contribute its pro rata (17%) proportion to the payment of such interest charge, viz., the sum of.....	.....	39,563.55
but the total net earnings from intrastate traffic in Virginia at present rates, was only $47,014.27, and under the proposed passenger rates will be only	.....	30,184.27
which will leave a deficiency of.....	.....	9,379.28
and leave no return whatever upon the stock.		

17 As of June 30th, 1905, the amount of stock of complainant, apportionable to Virginia upon the mileage basis is, at $10,900.38 per mile, and 128.07 miles, the sum of $1,396,011.67.

Complainant, therefore, respectfully shows that the result of the application of the proposed rule, regulation, order or requirement of the Commission, fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers would be confiscatory; reduce its earnings below what reasonable passenger rates, fares and charges would produce; deprive complainant of its property without just compensation, and without due process of law, and deny to it the equal protection of the laws, all contrary to the Fourteenth Amendment to the Constitution of the United States, the benefit and protection of which complainant respectfully claims.

The complainant further shows that the figures given in this bill, in respect to the result on its revenues for the year ended June 30, 1905, are in their net result fairly representative of past and future conditions, except that the operating expenses of the complainant have, since June 30, 1905, increased relatively far more than its gross earnings, and that the net result will be even more unfavorable, and yield a still smaller relative return to the complainant than is here shown for the year ended June 30, 1905.

Figures given in this bill are, as will be noted, for the year ended June 30th, 1905. The reason similar figures are not given for the year ended June 30th, 1906, is that they have not as yet been accurately compiled, but the complainant asks leave in the progress of this cause to give similar figures for the year ended June 30, 1906, which complainant alleges will show practically the same confiscatory consequences of the said proposed passenger fares as are here shown for the year ended June 30, 1905.

The general commercial conditions in Virginia are prosperous; the transportation service rendered by the complainant in intrastate transportation is large, and, at reasonable rates, the returns therefor to this complainant would be much greater.

The complainant further shows that there will be no compensatory increase in the business of this complainant resulting from the proposed reduced rates, and that there will be no appreciable or substantial increase whatever in such business due to such reduced rates.

The lines of railway of this complainant have at all times been operated as economically as practicable, under the existing conditions, and its operating expenses have at all times, under the conditions confronting it, been as reasonably low in amount as they could be made by economical and judicious management, and it
18 has not been possible, under the conditions existing, for the complainant to operate its road for less than it has been operated. In all respects it has confined its operating expenses, its taxes, its interest, and every other expenditure within the lowest and narrowest limit reasonably practicable under existing conditions.

The complainant respectfully shows to this Honorable Court that the result of the said rates and charges would be to deprive this complainant of its property without just compensation, to deprive it of the equal protection of the laws, and to take its property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States, the benefit and protection of which it expressly sets up and claims.

6. The complainant further shows that its present rates in Virginia are not higher than a reasonable compensation for the service rendered by it to travelers on its lines, and are in no sense excessive or extortionate; that they are not unjustly, unduly, unreasonably or illegally discriminatory as between individuals, nor as between localities, and that they in no way violate any law. The complainant is advised that it has, as an incident of its property, and as a property right, the right to charge for each service which it renders a reasonable compensation, and that this complainant is protected by the Fourteenth Amendment to the Constitution of the United States in making, receiving and collecting such charge. The effect of the

proposed rates and charges would be to materially diminish this complainant's charges, and to reduce them greatly below what would be a reasonable compensation for the respective services rendered to the travelers on its lines. The complainant is advised that to prevent it from charging a reasonable compensation for the service rendered the traveler would be to deprive it of its property without just compensation, and without due process of law, and would be to deny to it the equal protection of the laws, and this complainant again claims, in this regard, the benefit and protection of the Fourteenth Amendment to the Constitution of the United States, and shows that if the proposed rates and charges are put into effect the result would be, as aforesaid, to deprive it of its property contrary to the said Fourteenth Amendment to the Constitution of the United States.

7. This complainant is further advised that it has, as an incident of its property, and as a property right, the right to increase its charges whenever, under the circumstances then existing, its charges are less than a reasonable compensation for the service which
19 it renders, and that what may be a reasonable charge today for a service may become an unreasonably low charge tomorrow, or at any time thereafter, if conditions, in respect to the expense of the service, or other conditions, are so changed as to make it so. The complainant is therefore advised that any action by a State which attempts to fix a maximum charge beyond which the complainant cannot go, no matter how unreasonably low such maximum may become under changed conditions, would be to deprive the complainant of its property right to increase its rate up to what would, under such changed conditions, be a reasonable compensation for the service rendered, and would, therefore, violate the Fourteenth Amendment to the Constitution of the United States. This complainant avers that the said order of the Commission undertakes to fix a maximum beyond which this complainant cannot go, no matter what may be the circumstances, and that, therefore, said order is unconstitutional and void, as being in violation of the Fourteenth Amendment to the Constitution of the United States. This complainant further shows that many of its existing rates are lower than is just compensation for the service rendered, and have heretofore yielded, and will continue to yield to the complainant, much less than a reasonable return upon the value of its property employed in such service. Since they were fixed, the operating expenses of the complainant have, without its fault, been largely increased, the cost of equipment, of materials and supplies, and of labor, necessary for its operations, having all largely increased, so that the net return to this complainant has become much less than it has heretofore been, and it is not now, and never has been, as much as this complainant is entitled to receive. All of said maximum rates fixed by the proposed order of the State Corporation Commission are lower than a just compensation for the service rendered, and are lower than would afford this complainant a reasonable and just return upon the value of its property used in performing the services in return for such rates, and that the effect of said order, because thereof, and also because said order undertakes to impose an immovable maxi-

mum, is to deprive this complainant of its property without due process of law, and of the equal protection of the laws, and to take its property without just compensation, contrary to the said Fourteenth Amendment to the Constitution of the United States, the benefit and protection of which is again, in this regard, expressly set up and claimed.

8. This complainant further shows that its existing rates are properly adjusted in their relation between its interstate
20 rates and its State rates in Virginia and other states, and that all its charges are just and reasonable in themselves, and do not and will not give to this complainant more than a just and reasonable return upon the value of its property used in the transportation service which it renders to the public; and that any reduction in its revenues will seriously embarrass and obstruct it in providing, and will deprive it of its power to properly provide, the facilities which the public commerce dependent upon it for transportation absolutely requires for the movement of traffic, both intra and interstate. This complainant is advised that no state has a right to require that its own traffic between points within the state shall be given a preferential service or shall be carried at preferential and lower rates than other traffic. No state has a right to require such discrimination or partiality in favor of its own traffic. This complainant shows that the effect of the said rates proposed to be put into effect, pursuant to the order of the State Corporation Commission hereinbefore referred to, will be to destroy the proper adjustment of its intrastate rates in Virginia to its interstate rates generally, and to its intrastate rates in other states, and to require that a preference shall be given by this complainant, and an undue discrimination exercised by it, in favor of the intrastate passenger traffic in Virginia over the interstate passenger traffic carried by this complainant, and over the intrastate passenger traffic of this complainant in other states, and that to require such preferential and such undue discrimination in regard to the intrastate passenger traffic of the State of Virginia would be to so regulate and burden interstate commerce as to violate the commerce Clause of the Constitution of the United States, the benefit and protection of which this complainant respectfully sets up and claims.

9. That complainant further shows that there is no just reason for making a rule for some of the railroads different from that made for the complainant in respect to its passenger charges, and that there is no reasonable basis for such difference. Each of the carriers in said State of Virginia is, under the Constitution of the United States, entitled to charge a reasonable compensation for the service rendered, and the difference in rates ordered by the said Commission creates a merely arbitrary classification based upon no proper or sufficient reason. This complainant is, therefore, advised that the effect of said order in making such difference in classification and in permitting one carrier to charge for the same service in Virginia a greater sum than is permitted to another carrier in Virginia is to deprive this complainant of the equal protection of the
21 laws contrary to the Fourteenth Amendment to the Constitution of the United States, which this complainant, in this regard, here again respectfully sets up and claims.

10. It is provided by the Constitution of Virginia that any corporation failing or refusing to obey any valid order or requirement of the Commission within such reasonable time, not less than ten days, as shall be fixed in the order, may be fined by the Commission (proceeding by due process of law) such sum not exceeding five hundred dollars as the Commission may deem proper, or such sum, in excess of five hundred dollars, as may be prescribed or authorized by law; and each day's continuance of such failure or refusal, after due service upon such corporation of the order or requirement of the Commission, shall be a separate offense. And it is further provided that the right of no person to institute and prosecute in the ordinary courts of justice any action, suit or motion against any transportation or transmission company for any claim or cause of action against such company shall be extinguished or impaired by reason of any fine or other penalty which the Commission may impose, or be authorized to impose, upon such company because of its breach of any public duty, or because of its failure to comply with any order or requirement of the Commission; but in no such proceeding by any person against such corporation, nor in any collateral proceeding shall the reasonableness, justness or validity of any rate, charge, classification or traffic, rule, regulation, or requirement, theretofore prescribed by the Commission, within the scope of its authority, and then in force, be questioned. If, therefore, the said order herein complained of, of the State Corporation Commission, shall be permitted to go into effect, it will subject this complainant to the danger of a multitude of suits based upon such order, and to prosecution for penalties to enormous amounts. The complainant further shows that unless it is relieved in this cause, the number of actions aforesaid, and the number of actions for penalties to which it will be thus exposed, and which will be thus instituted against it, will be enormous, and it would be seriously and unjustly burdensome and expensive to the complainant to be subjected to the numerous suits and prosecutions for penalties to which it would be subjected if relief herein is not granted. And the tendency of such suits, involving in the aggregate such enormous amounts, would be to depreciate the value of complainant's property and the value of its stocks and bonds, and would greatly impair its credit, and consequently its ability to perform the public service required by
22 the commerce tributary to its lines, and would inflict great and irremediable injury and damage, not only upon the complainant, and upon the holders of its stocks and bonds, but also upon the traveling public.

11. The defendants, Beverley T. Crump, Henry C. Stuart, and Joseph E. Willard, constitute the State Corporation Commission of Virginia, the said Beverley T. Crump being its Chairman, and the said Henry C. Stuart and Joseph E. Willard being associate members thereof, and the said R. T. Wilson is the clerk of said Commission.

12. The complainant shows to the court that its purpose in this cause is, by an orderly proceeding in the courts, to obtain a judicial determination of its rights under the Constitution of the United States, and, if, as it is advised and believes, its just rights in the

premises are imperiled, denied and encroached upon by the order of the State Corporation Commission hereinbefore complained of as contrary to the Constitution of the United States, then to obtain a judicial decree establishing and protecting the rights of this complainant, and to that end it is essential, as alleged in this bill, that an injunction shall be issued; but this complainant does not desire in any way injuriously to affect any lawful right of the State or the people of Virginia, or of any other person, and hereby complainant offers and undertakes to do all in its power to maintain the *status quo* during the course of this judicial inquiry, and accordingly it consents, and it prays the court, that there may be, and shall be, adopted herein a proceeding analogous to that provided by subsection (*e*) of section 156 of the Constitution of Virginia, namely, the execution of a bond by the complainant conditioned to pay into the registry of this court, from time to time, when and as the court may so order, such sum or sums of money as shall be equal to the difference between the aggregate passenger rates charged and received by it, and those fixed by the said order of the commission, and that, as an incident thereto, the complainant shall give to any person purchasing a ticket for travel on its lines in the State of Virginia written evidence, representing the sum to which such person or his transferee will be entitled upon a final decision upholding the constitutionality of such order, the amount covered by such written evidence, in that event to be payable out of the cash deposit in the registry of this court; and that this complainant, from time to time, shall report to the court at intervals to be fixed by the order of the court herein, statements showing the amount of such passenger fares by it charged and collected, and that
23 from time to time the complainant shall give such further bond or bonds as the court may require, to secure the proper payment into court of all amounts which finally it shall be adjudged that it should repay, or reimburse, under the final decision of this court, or upon final review thereof; and that on a final determination herein that this complainant is entitled to the amounts covered by said bond or bonds, the said bonds be released and canceled by the court, and, if any amounts shall have been paid into the registry of the court pursuant thereto, that, upon such determination in favor of the complainant, the sum or sums so paid into the registry shall be repaid to the complainant, without further order of the court herein.

13. The subject matter of this suit now brought before this Honorable Court involves questions arising under the Constitution of the United States and rights asserted by the complainant under said Constitution, and protected thereby, and the amount involved herein, exclusive of interest and costs, exceeds the sum or value of two thousand dollars.

14. The complainant avers that it will be irremediably injured unless an injunction be granted as hereinbefore prayed, and relief be given to it in this suit.

In consideration whereof, and forasmuch as your complainant is remediless in the premises under the rules of the common law, and can have adequate relief only in a court of equity, where matters of

this nature are properly cognizable and relievable, and to the end, therefore, that the defendants hereinafter named may answer the several matters and things hereinbefore set forth as fully and particularly as if the same were again here repeated, and they were thereunto specially interrogated, but not under oath, answer under oath being expressly waived, the complainant prays that the said defendants be required so to answer, and that an injunction may be issued out of this court enjoining and prohibiting the defendants, Beverley T. Crump, Henry C. Stuart, and Joseph E. Willard, constituting the State Corporation Commission of Virginia, and each of them individually, and jointly, as constituting said State Corporation Commission of Virginia, and each and all their successors in office, from publishing, or having published, in any newspaper published in the City of Richmond, Virginia, the said order of the State Corporation Commission, bearing date the 27th day of April, 1907, in respect to passenger rates, and from taking any other step or steps whatsoever under the Constitution or Laws of Virginia, to enforce the requirements of the said order, or so as to hinder or
24 prevent the complainant from increasing its passenger charges, to the extent that such increase may be fair, reasonable and just, and enjoining and prohibiting the defendant, R. T. Wilson, Clerk of the State Corporation Commission, and his successors in office, from publishing, or having published, the said order of the Commission in any newspaper published in the City of Richmond, Virginia, and enjoining and prohibiting the owner, proprietor, manager, or agent of any such owner, proprietor or manager of any newspaper in the City of Richmond, Virginia, from publishing or having published under the direction of the Commission, or the clerk thereof, such order of the Commission; and that the requirements of the said order of the Commission, and each and every provision of the said order, be declared to be unreasonable, unfair and unjust to the complainant, and unconstitutional, null and void.

That in the meantime, and until a decision can be had upon your complainant's motion for the injunction herein prayed, a restraining order may be granted, restraining the acts sought herein to be enjoined, your complainant hereby averring that there is danger of irreparable injury from delay if action should not be taken until such motion for an injunction can be tried upon its merits.

That a writ of injunction be issued, etc., commanding, etc., enjoining the defendants as above prayed.

That on a final hearing said injunction as herein prayed may be made perpetual; that the said order of the Commission and each and every requirement thereof be declared null and void by a decree of this court, so far as the same relate to any of your complainant's said lines of railroad in Virginia, or to any of its business, and that your complainant may have such other and further relief as in justice it may be entitled to, and as to equity is meet.

May it please your Honors to grant unto your complainant the temporary restraining order aforesaid, the writ of injunction aforesaid, and the writ of subpœna addressed to said defendants, Beverley T. Crump, Henry C. Stuart, and Joseph E. Willard, individually,

and as constituting the State Corporation Commission of Virginia, and R. T. Wilson, Clerk of the State Corporation Commission, commanding said defendants, under a penalty therein named, to appear in this court, on some certain day, to be thereby fixed, to answer the premises and abide by and perform such decree as may be passed herein, but said answer as above stated not to be made on oath, answer under oath being expressly waived.

This is the first application by your complainant for a restraining order or injunction in this cause.

ATLANTIC COAST LINE RAILROAD COMPANY, *Complainant.*
By W. J. CRAIG, *Passenger Traffic Manager.*

Solicitors for Complainant.

WM. B. McILWAINE.
ALEXANDER HAMILTON.

STATE OF VIRGINIA, *City of Petersburg, To-wit:*

Personally appeared before me, M. B. Cogbill, a Notary Public, duly commissioned, qualified and acting as such in and for the City of Petersburg, in the State aforesaid, W. J. Craig, who, upon being first duly sworn, deposes and says:

That he is Passenger Traffic Manager of the Atlantic Coast Line Railroad Company, the complainant in the foregoing bill of complaint; that he is acquainted with the passenger traffic and tariff of said Company; that he has read the foregoing bill and knows the contents thereof; that the facts therein stated, as of complainant's own knowledge, are true; and that the facts therein stated, upon complainant's information and belief, he believes to be true.

Sworn and subscribed to before me this 13th day of May, in the year 1907.

My commission as Notary Public expires on the first day of March, 1909.

In witness whereof I have hereunto signed my name and affixed my notarial seal at the City of Petersburg, in the State of Virginia, this 13th day of May, in the year 1907.

M. B. COGBILL,
Notary Public.

[Impressed Seal of Notary.]

No tax required.

26 EXHIBIT "A."

Copy of Charter of Atlantic Coast Line Railroad Company.

ACTS OF THE GENERAL ASSEMBLY OF VIRGINIA, SESSION 1835-36.

CHAP. 121.—An Act incorporating the stockholders of the Richmond and Petersburg railroad company.

(Passed March 14, 1836.)

1. Be it enacted by the general assembly, That it shall be lawful to open books in the city of Richmond and town of Petersburg, under the direction of Joseph Marx, Nicholas Mills, R. B. Haxall, James Bosher, Conway Robinson, Gustavus A. Myers and John A. Lancaster for the city of Richmond; and Robert Bolling, Charles F. Osborne, Joseph Bragg, Hartwell P. Heath, James Macfarland, Jr., P. Durkin and John Taliaferro for the town of Petersburg, or any two of the same, or of any deputies or agents of the said commissioners, for the purpose of receiving subscriptions to the amount of three hundred thousand dollars, to constitute with any amount which the board of public works may be authorized to subscribe on behalf of the state at the present session of the legislature, a joint capital stock for the purpose of making a railroad between the city of Richmond and the town of Petersburg, and for extending a branch or branches of the said railroad, should the company hereby incorporated at the commencement of the work, or at any time afterwards, deem it advisable to do so, from a point or points on the line of the said railroad to Bermuda Hundred: Provided, Nothing herein contained shall be construed as granting the privilege of extending the railroad along any of the streets of the said city of Richmond or town of Petersburg, except with the consent of the common council of the said city or town, or along any of the streets of the town of Manchester, except with the consent of the trustees of the said town: And provided, That the general assembly shall at any time hereafter be at liberty to incorporate any company or companies to construct a lateral railroad or railroads to connect with the railroad herein authorized, to any intermediate point.

2. The time and place for receiving subscriptions as aforesaid, shall be advertised in one or more newspapers published in the city of Richmond and town of Petersburg, and the books for re-
27 ceiving the same shall not be closed in less than three days, and if it shall appear that more than three thousand shares of the capital stock aforesaid shall have been subscribed for within the said three days, it shall be the duty of the said commissioners or any five of them, to reduce the number of shares subscribed for among the subscribers in fair and equal proportions to the amount of stock subscribed for respectively by each, until the whole amount of shares shall be reduced to three thousand: Provided, however, That the books shall be opened in the first instance, at each of the said towns,

for receiving subscriptions at each, to the amount of fifteen hundred shares, and the scale of reduction shall be applied separately to the subscriptions made at the two places; but if the whole amount of shares shall not be subscribed for within three days from the time the books shall be opened to receive subscriptions, then the books may be closed or continued open, or closed and reopened, at either of said towns without further notice, as a majority of the above named commissioners may judge to be most expedient, until the whole number of shares shall be subscribed for.

3. When fifteen hundred shares shall be subscribed in manner aforesaid, the subscribers, their executors, administrators or assigns, shall be and they are hereby declared to be incorporated into a company, by the name and style of "The Richmond and Petersburg Rail-Road Company; and by that name shall be capable in law of purchasing, holding, selling, leasing and conveying estates, real, personal and mixed, so far as shall be necessary for the purposes hereinafter mentioned, and no farther; and shall have perpetual succession, and by said corporate name may sue and be sued, and may have and enjoy, and may exercise all the powers, rights and privileges which other corporate bodies may lawfully do, for the purposes mentioned in this act, and may make all such by-laws, rules and regulations, not inconsistent with the laws of this state or of the United States, as shall be necessary for well ordering and conducting the affairs of the company.

4. Upon any subscription of stock as aforesaid, there shall be paid at the time of subscribing, to the said commissioners, their deputies or agents appointed to receive such subscriptions, the sum of five dollars on every share subscribed, and the residue thereof shall be paid in such instalments and at such times as it may be required by the president and directors of the company. The said commissioners and deputy commissioners shall forthwith after the election of the president and directors of the company, pay over to the said
28 president and directors all moneys received by them; and in failure thereof, the said president and directors may recover the amount due from them, or from any one or more of them, by motion, on ten days' previous notice in the superior or inferior court of any county or corporation wherein such commissioner or commissioners, their executors or administrators may reside. The clerk shall endorse upon the execution which shall issue upon such judgment, that no security shall be taken, and the sheriff or other officer shall govern himself accordingly.

5. When fifteen hundred shares or more of the stock shall have been subscribed, public notice of that event shall be given by any three or more of the said commissioners, who shall have power at the time to call a general meeting of the subscribers at such convenient place and time as they shall name in the said notice. To constitute such a meeting, a number of persons entitled to a majority of all the votes, which could be given upon all shares subscribed shall be present either in person or by proxy; and if a sufficient number to constitute a meeting do not attend on that day, those who do attend shall have power to adjourn from time to time until a meeting shall be formed.

6. The subscribers at their general meeting before directed, and the proprietors of the stock at every annual meeting thereafter, shall elect a president and five directors, who shall continue in office, unless sooner removed, until the next annual meeting after their election, and until their successors shall be elected; but the said president, or any of the directors, may at any time be removed, and the vacancy thereby occasioned be filled by a majority of the votes given at any general meeting. The president, with any three or more of the directors, or in the event of the sickness, disability or absence of the president, any three or more of the directors, who shall appoint one of their own body president *pro tempore*, shall constitute a board for the transaction of business. In case of vacancy in the office of president or any director, happening from death, resignation, removal or disability, such vacancy may be supplied by appointment of the board, or by the proprietors in general meeting: And provided, That no such branch or lateral railroad shall be extended to or towards the coal mines in the county of Chesterfield.

7. The president and directors of the said company shall be and they are hereby invested with all the rights and powers necessary for the construction, repair and maintaining of a railroad to be
29 located as aforesaid, with as many sets of tracks as they, or a majority of them may deem necessary, and may cause to be made, and also to make and construct all works whatsoever which may be necessary and expedient in order to the proper completion of the said railroad.

8. It shall be the duty of the said president and directors first to defray with any moneys which may be received by them of the commissioners, the expenses of the preliminary surveys for the railroad, made prior to the incorporation of the company. The said president and directors shall afterwards have power to make contracts with any person or persons on behalf of the company, for making the said railroad, and performing all other works respecting the same which they shall judge necessary and proper, and to require from the subscribers from time to time, such advances of money on their respective shares as the wants of the company may demand, until the whole of the subscriptions shall be advanced; to call on any emergency a general meeting of the subscribers, giving one month's notice thereof in one of the newspapers printed in the city of Richmond or town of Petersburg, to appoint a treasurer, clerk and such other officers as they may require, and to transact all the business of the company during the intervals between the general meetings of the stockholders.

9. If any stockholder shall fail to pay the sum required of him by the president and directors, or a majority of them, within one month after the same shall have been advertised in one of the newspapers published in the city of Richmond and town of Petersburg, it shall and may be lawful for the president and directors, or a majority of them, to sell at public auction, and to convey to the purchaser, the share or shares of such stockholders so failing or refusing, giving one month's previous notice of the time and place of sale in manner aforesaid; and after retaining the sum due and all charges

of the sale out of the proceeds thereof to pay the surplus over to the former owner or his legal representative; and if the said sale shall not produce the sum required to be advanced with the incidental charges attending the sale, then the president and directors may recover the balance of the original proprietor or his assignee, or the executor or administrator of either of them, by motion on ten days' notice before the court of that county of which he is an inhabitant, or by warrant before a justice of such county; and any purchaser of the stock of the company under the sale by the president and directors shall be subject to the same rules and regulations as the original proprietors.

10. Be it further enacted, That if the capital stock of the company hereby incorporated shall be found insufficient for the purposes of this act, it shall and may be lawful for the president and directors of said company, or a majority of them, from time to time, to increase the said capital stock to an amount not exceeding eight hundred thousand dollars, by the addition of as many shares as they may deem necessary; first giving to the individual stockholders, for the time being, or their legal representatives, the option of taking such additional shares in proportion to the amount of stock respectively held by them, and opening books of subscription in the city of Richmond and town of Petersburg, as is herein prescribed for the original stock of the company for any balance of capital stock created which may not be taken by the stockholders for the time being, or in their behalf; and the subscribers for such additional shares of the capital stock in the said company are hereby declared to be thenceforward incorporated into the said company, with all the privileges and advantages, and subject to all the liabilities of the original stockholders.

11. Be it further enacted, That the said president and directors, or a majority of them, shall have power to borrow money for the objects of this act, to issue certificates or other evidences of such loans, and to make the same convertible into stock of the company at the pleasure of the holder: Provided, That the capital stock shall not thereby be increased to an amount exceeding eight hundred thousand dollars; and to pledge the property of the company for the payment of the same and its interest: Provided, That no certificate of loans convertible into stock, or creating any lien or mortgage on the property of the company, shall be issued by the president and directors, unless the expediency of making a loan on such terms, and of issuing such certificates, shall have first been determined on at a general meeting of the stockholders, by two-thirds of the votes which could legally be given in favour of the same.

12. Be it further enacted, That the said president and directors, their officers, agents and servants, shall have full power and authority to enter upon all lands and tenements through which they may desire to conduct their railroad, and to lay out the same according to their pleasure, so that the dwelling house of no person be invaded without his consent; and that they shall have power to enter in and lay out such contiguous land as they may desire to occupy as sites for depots, toll-houses, warehouses, engine sheds, workshops and other buildings for the necessary accommodation of their officers, agents and servants, their horses, mules and other cattle, and for the protection of the property entrusted to their

care: Provided, That the land so laid out on the general line of the railroad shall not exceed, except at deep cuts and fillings, eighty feet in width, and that the adjoining land for the sites of buildings, unless the president and directors can agree with the owner or owners for the purchase of the same, shall not exceed one and *an* half acre in any one parcel. If the president and directors cannot agree with the owner or owners of the lands so entered on and laid out by them on the terms to purchase, it shall be lawful for them to apply to the court of the county in which such land or the greater part thereof may lie; and upon such application, the court shall appoint five discreet, intelligent, disinterested and impartial freeholders to assess the damages to the owner from the condemnation of his land for the purposes aforesaid. No such appointment, however, shall be made, unless ten days' previous notice of the application shall have been given to the owner of the land, or to the guardian, if the owner be an infant, or to the committee, the owner being *non compos mentis*, if such owner, guardian, or committee can be found within the county, or if he cannot be so found, then such appointments shall not be made, unless notice of the application shall have been published at least one month next preceding in some newspaper printed as convenient as may be to the courthouse of the county, and shall have been posted at the door of the courthouse on the first day at least of the next preceding term of the said court. A day for the meeting of the said freeholders to perform the duty assigned them, shall be designated in the order appointing them; and any one or more of them attending on that day, may adjourn from time to time, until their business shall be finished. Of the five freeholders so appointed, any three or more may act, after having been duly sworn or solemnly affirmed before some justice of the peace, that they will impartially and justly, to the best of their ability, ascertain the damages which will be sustained by the proprietor of the land from the condemnation thereof for the use of the company, and that they will truly certify their proceedings thereupon to the court of the said county.

13. It shall be the duty of the said freeholders in pursuance of the order appointing them, to assemble on the land proposed to be condemned, and after viewing the same, and hearing such proper evidence as either party may offer, they shall ascertain according to the best of their judgment the damages which the proprietor of the land will sustain by the condemnation thereof for the use of the
32 company. In performing this duty, they shall consider the proprietor of the land as being the owner of the whole fee simple interest therein; they shall take into consideration the quantity and quality of the land to be condemned, the additional fencing which will be required thereby, or the injury or inconvenience which will result to the proprietor from dispensing with the same, and all other inconveniences and injuries which will result to the proprietor from the passage of the railroad through his lands, and shall combine therewith a just regard to the advantages which the owner of the land will derive from the construction of the railroad.

14. When the said freeholders shall have agreed upon the amount of damages, they shall forthwith make a written report of their proceedings under their hands and seals, in substance as follows: "We —— ——, freeholders, appointed by an order of the county

court of ——, for the purpose of ascertaining the damages which would be sustained by —— ——, the proprietor of certain lands in the said county, through which the president and directors of the Richmond and Petersburg railroad company propose to conduct their said railroad, do hereby certify, that we met together on the land aforesaid on the — day of ——, the day appointed therefor by the said order (or day to which we were regularly adjourned from the day appointed for our meeting by the said order), and that having been first duly sworn, and having viewed the premises, we proceeded to estimate the quantity and quality of the land aforesaid, the quantity of additional fencing which would probably be occasioned by its condemnation, and all other inconveniences which seemed to us likely to result therefrom to the proprietor of said land, that we combined with these considerations, as far as we could, a just regard to the advantages which would be derived by the proprietor of said land from the construction of the railroad, for the use of which the said land is to be condemned; that under the influence of these considerations, we have estimated, and do hereby assess the sum of ——, as the amount of damages or injury which the said proprietor will sustain beyond the amount of benefit which he will derive from the construction of the said railroad. Given under our hands and seals, this — day of ——." At the foot of the report so made, the magistrate before whom the said freeholders were sworn, shall make a certificate in substance as follows: "—— county, to-wit: I, —— ——, a justice of the peace for said county, do hereby certify, that the above named freeholders, before they executed their duties as above certified, were solemnly sworn, or affirmed, before me, that they would impartially and justly, to the best of their ability, ascertain the damages which would be sustained by the above named —— ——, from the condemnation and use of his lands, for the purposes of the Richmond and Petersburg railroad company, having a just regard to the advantages which the said —— —— would derive from the construction of said railroad, and that they would certify truly their proceedings thereupon to the court of the said county. Given under my hand, this — day of ——."

15. The report of the freeholders so made, together with the certificate of the magistrate as aforesaid, shall be forthwith returned by the said freeholders to the court of the county, and unless good cause be shown against the report, it shall be confirmed by the court and entered of record; but if the said report should be disaffirmed, or if the said freeholders, being unable to agree, should report their disagreement, or if from any other cause they should fail to make a report within a reasonable time after their appointment, the court may, at its discretion, as often as may be necessary, supersede them, or any of them, appoint others in their stead, and direct another view and report to be made in the manner above prescribed. On the confirmation of any such report, and on the payment or tender to the proprietor of the land, of the damages so assessed, or the payment of said damages into court, when for good cause shown the court shall so have ordered it, the land viewed and assessed as aforesaid, shall be vested in the Richmond and Petersburg railroad company in the same manner as if the proprietor had sold and conveyed it to them.

16. While these proceedings are depending for the purpose of ascertaining the damage to the proprietor for the condemnation of his land, and even before they shall have been instituted, the president and directors, if they think that the interest of the company requires it, may by themselves, their officers, agents and servants, enter upon the lands laid out by them as aforesaid, and which they desire to condemn, and apply the same to the uses of the company. If, when they so take possession, proceedings to ascertain the damages as aforesaid be pending, it shall be their duty diligently to prosecute them to a conclusion. And when the report of the freeholders ascertaining the damages shall be returned and confirmed, the court shall render judgment in favor of the proprietor of the land for the amount thereof, and either compel its payment into court, or award process of execution for its recovery, as to them shall seem right. In the meantime no order shall be made, and no injunction shall
34 be awarded, by any court or judge, to stay the proceedings of the company in the prosecution of their works, unless it be manifest that they, their officers, agents or servants, are transcending the authority given them by this act, and that the interposition of the court is necessary to prevent injury that cannot be adequately compensated in damages.

17. If the president and directors shall take possession of any land before the same shall have been purchased by them, or condemned and paid for according to the provisions of this act, and shall fail for forty days to institute proceedings for its condemnation as aforesaid, or shall not prosecute with due diligence the proceedings commenced for that purpose, it shall be lawful for the proprietor of the land, upon giving to the said president and directors, or any one of them, ten days' previous notice, to apply to the court of the county in which the land or the greater part thereof shall lie; and upon such application the court shall appoint five discreet, intelligent, disinterested and impartial freeholders to assess the damages to the owner from the condemnation of his land for the use of the company; shall appoint a day for their meeting to perform the duties assigned them, and shall dismiss at the costs of the company any proceeding then depending on their behalf for the condemnation of the same land. The freeholders so appointed, any three or more of whom may act, shall proceed in the performance of their duties in all respects in the same manner as if they had been appointed on the application of the president and directors of the company. And the court shall in like manner confirm or disaffirm their report, supersede them or any of them, and appoint others in their stead, or direct another view and report to be made as often as may be necessary. And when any such report ascertaining the damages shall be confirmed, the court shall render judgment in favor of the proprietor for the damages so assessed, and double costs, and shall thereupon either compel the company to pay into court the damages and costs so adjudged, or award process of execution therefor, as to them shall seem right.

18. When the judgment rendered for the damages assessed and costs, shall be satisfied by the payment of the money into court or otherwise, the title of the land for which such damages are assessed

shall be vested in the company in the same manner as if the proprietor had sold and conveyed it to them.

19. The said president and directors, for the purpose of constructing their railroad aforesaid and the works necessarily connected therewith, or of repairing the same after they shall have been made, or of enlarging or otherwise altering the same, shall be at liberty, by themselves, their officers, agents or servants, at any time to enter upon any adjacent lands, and to cut, quarry, dig, take and carry therefrom, any wood, stone, gravel or earth, which they may deem necessary: Provided, however, That they shall not, without the consent of the owner, cut down any fruit tree, or any tree preserved in any field or lot for shade or for ornament, or take any timber, gravel, stone or earth constituting any part of any fence or building. For all wood taken under authority of this act, and for all incidental injuries done to the enclosures, crops, woods or grounds in taking or carrying the same away, or in removing any stone or gravel, the said president and directors shall make to the owner a fair and reasonable compensation, to be ascertained, if the parties cannot agree, by any three impartial, intelligent and disinterested freeholders, who being appointed for that purpose, by any justice of the peace thereto required by either of the parties, shall be sworn by him, and shall then ascertain the compensation upon their own view of the grounds whence the said wood, stone, gravel or earth may have been taken, and of the injury done as aforesaid in taking them: Provided, however, That it shall be the duty of the owner or owners to show to the justice of the peace to whom the application is made, that ten days previous notice of the time of making the same has been given to the president or one of the principal agents of the said railroad company, and no award which may be given under any appointment without such notice shall be obligatory or binding on said company: Provided further, That either party not satisfied with the award, may appeal to the court of the county, which may at its discretion confirm the said award and enter it of record, or as often as may in its opinion be necessary, may supersede the said freeholders, or any of them, appoint others in their stead, and direct another view and award to be made in the manner above prescribed.

20. If the said president and directors on entering upon the land of any person under the authority of this act, for the purpose of laying out or constructing, enlarging, altering or repairing any of their said works, shall by themselves or their officers, do any wanton or wilful injury to such land or its appurtenances, or to the crops growing or gathered, or to any other property thereon, the Richmond and Petersburg railroad company shall pay to the person so injured double the amount of damages which shall be assessed by a jury in any proper action therefor; if such injury be done by any person or persons who may have contracted with the company for the construction of any portion of their railroad, or any of the works connected therewith, he or they shall be responsible to the injured party in the like amount.

21. Whenever in the construction of said railroad it shall be necessary to cross or intersect any established road or way, it shall

be the duty of the said president and directors so to construct the said railroad across such established road or way, as not to impede the passage or transportation of persons or property along the same; or where is shall be necessary to pass through the land of any individual, it shall also be their duty to provide for such individual proper wagon ways across said railroad from one point of his land to the other; Provided however, That in order to prevent the frequent crossings of established roads or ways, or an interference with the same, it may be lawful for the president and directors to change the same at points where they deem it expedient to do so. And that for entering upon or taking of any lands which may be necessary therefor, they shall be and are hereby authorized to proceed under the provisions of this act, as in the case of land necessary for their railroad. Provided *fa*rther, that previous to the making of any such change, the said company shall make and prepare a road equally good with the portion of the road proposed to be substituted; but nothing herein contained shall be so construed as to make it incumbent on the company to keep in repair the portion of any road which they may have changed as aforesaid.

22. The said president and directors, or a majority of them, shall have power to purchase with the funds of the said company, and place on the railroad constructed by them under this act, all machines, wagons, vehicles, carriages, and teams of any description whatsoever, which they may deem necessary or proper for the purposes of transportation. All machines, wagons, vehicles and carriages, purchased as aforesaid with the funds of the company, and all their works constructed under the authority of this act, and all profits which shall accrue from the same, shall be vested in the respective shareholders of the company forever, in proportion to their respective shares; and the same shall be deemed personal estate, and shall be exempt from any public charges or tax whatsoever.

23. Upon the railroad hereby authorized the company shall have the exclusive right of transportation. When it is completed they shall at all times furnish and keep in good repair, the neces-
37 sary carriages and other requisites for the safe and convenient transportation of persons and property; and it shall be their duty at all times, upon the payment or tender of the tolls hereby allowed them, to transport to any convenient place of delivery on the road which the owner of the goods may indicate, and there to deliver all articles which shall be delivered to them for transportation, or offered to them in proper condition to be transported, at some place on the road convenient for the reception thereof. They shall give no undue preference in transportation to the property of one person over that of another, but as far as practicable shall carry each in the order of time in which it shall be delivered or offered for transportation, with the tolls paid or tendered. If the company, or any of its officers or agents, shall fail to receive, transport or deliver in due time, any property so offered or delivered to them for transportation, or shall fail to take up or set down any passenger or passengers at such convenient point as he or they may desire, upon the payment or tender of the passage money hereby allowed, they shall

forfeit and pay to the party so injured double the amount of the lawful tolls paid or tendered, and shall moreover be liable to an action on the case, in which full damages and double costs shall be recovered.

24. So soon as any portion of the railroad hereby authorized may be in readiness for transportation, it shall be lawful for the said president and directors to transport by their officers and agents, or by contractors under them, persons and property on the same; and they shall have power to charge for the transportation of persons, goods, produce, merchandise and other articles, and for the transportation of the mail, any sum not exceeding the following rates, viz. on persons, not exceeding eight cents per mile for each person, unless the distance which any person be transported be less than ten miles, in which case the president and directors may be entitled to make an extra charge of fifty cents for taking up and putting down each person so transported; for the transportation of goods, produce, merchandise and other articles, not exceeding an average of ten cents per ton per mile; and for the transportation of the mail, such sum as they may agree for, and the said president and directors shall be furthermore entitled to demand and receive for the wharfage, weighing, storage and delivery of produce and other commodities at their depots and warehouses, rates not exceeding the ordinary warehouse rates charged in the city of Richmond and town of Petersburg.

25. Be it further enacted, That if the president and directors shall deem it advisable to construct the bridges which may be necessary on the line of their railroad of sufficient width to admit of the passage of common roads, as well as their railroad over the same, they may be entitled to demand and receive from all persons, and for wagons, carriages, and all four and two wheeled conveyances, and for all beasts of burthen, sheep and hogs passing the same, such rates of toll as may appear to them fair and reasonable, subject to the revision and regulation of the board of public works from time to time: Provided however, That no bridge, other than a railroad bridge, shall be constructed across the James river at the city of Richmond without the consent of the proprietor or proprietors of Mayo's bridge.

26. As soon as ten miles of the railroad hereby authorized shall be completed, the president and directors shall annually or semi-annually declare and make such dividends as they may deem proper, of the net profits arising from the resources of the said company, after deducting the necessary current and probable contingent expenses of the said company; and shall divide the same among the proprietors of the stock of the said company in proper proportions to their respective shares.

27. An annual meeting of the subscribers to the stock of the said company shall be held at such time and place in each year as the stockholders at their first general meeting, or at any subsequent meeting, may appoint; to constitute which or any general meeting called by the president and directors according to the provisions of this act, the presence of proprietors entitled to a majority of all the votes which could be given by all the stockholders, shall be necessary

either in person or by proxy properly authorized; and if a sufficient number do not attend on that day, or any day appointed for a general meeting called by the directors as aforesaid, the proprietors who do attend may adjourn from time to time until a general meeting shall be had.

28. In counting all votes of the said company, each member shall be allowed one vote for each share not exceeding two shares, one vote for every two shares above two and not exceeding ten shares, and one vote for every five shares above ten by him held at the time in the stock of the company: Provided, however, That no stockholder, whether an individual, body politic or corporate, shall be entitled to more than sixty votes on any amount of capital stock of the said company held by him or them.

29. The president and directors shall render distinct accounts of their proceedings and disbursements of money to the annual meeting of the stockholders.

39 30. The works hereby required of the Richmond and Petersburg railroad company shall be executed with diligence; and if they be not commenced within two years after the passage of this act, and finished within ten years after the first general meeting of the stockholders, then their charter shall be forfeited.

31. The president and directors shall cause to be written or printed, certificates for the shares of the stock in the said company, and shall deliver one such certificate, signed by the president and countersigned by the treasurer, to each person for the number of shares subscribed by him; which certificate shall be transferable by him, subject however, to all payments due or to become due thereon; and such assignee having first caused the transfer or assignment to be entered in a book to be kept for that purpose, shall henceforth become a member of the said company, and shall be liable to pay all sums due or which shall become due upon the stock assigned to him: Provided however, That such assignment shall in no wise exempt the assignor or his representative from their liabilities to the said company for the payment of all such sums, if the assignee or his representatives shall be unable or fail to pay the same.

32. If any person or persons shall wilfully, by any means whatsoever, injure, impair or destroy any part of any railroad constructed under this act, or any of the necessary works, machinery, wagons, vehicles or carriages belonging to the said company, such person or persons shall be punished according to the laws which may be in force at the time for the protection of public works or property of the commonwealth.

33. Be it further enacted, That if at any time hereafter the above rates for toll and transportation shall enable the said president and directors, after the payment of all necessary expenses, and after setting apart a fair and reasonable sum for the renewal and repairs of the road, warehouses, depots and other constructions, and of the machines, cars and other vehicles for transportation, to divide more than fifteen per cent. on their capital stock invested, that then the said rates of toll and transportation shall be reduced by the said

president and directors so as to enable them to divide fifteen per cent. and no more.

And whereas the Manchester and Petersburg turnpike company, incorporated by an act of the general assembly, passed February the thirteenth, eighteen hundred and sixteen, "to establish a turnpike road from the town of Manchester to the town of Petersburg," have presented at this session of the general assembly a memorial, praying that an act may be passed to authorize the said company to raise by subscription an additional capital of four hundred thousand dollars, and to construct a railroad from the city of Richmond to the town of Petersburg, upon such terms and conditions, and under such limitations and restrictions, as may seem to the general assembly just and reasonable; but if this may not be awarded to the said company, then praying that, in incorporating a new company to make the contemplated railroad, such an indemnity shall be provided for the memorialists as may be just and reasonable:

34. Be it therefore enacted, That any stockholder in the said Manchester and Petersburg turnpike company, may within six months from the time that the company hereby authorized shall stand incorporated, transfer his stock to the said company; and the said company hereby authorized shall pay to such stockholder the value of the stock so transferred; and the company hereby authorized shall, in respect to the stock so transferred to it, be entitled to the same rights and privileges that an individual would have, and be bound to perform the same duties that an individual would be bound to perform in case such transfer were to an individual. The value of the stock in the Manchester and Petersburg turnpike company shall be ascertained by four commissioners, two of whom shall be appointed by the president and directors of the said Manchester and Petersburg turnpike company, or a majority of them, and the other two by a majority of the persons under whose directions books are authorized to be opened by this act for receiving subscriptions, and in case of failure by either of the parties above named to make the appointment, then by the board of public works. If a majority of the said commissioners should be unable to agree upon the sum to be fixed as the value of the stock, the four commissioners, or a majority of them, shall appoint one additional commissioner to act with them in ascertaining such value. The above commissioners shall be appointed by the fifteenth day of April next, and report their decision on or before the first day of June next to the board of public works, which shall be binding, as well on the railroad company hereby established, as the Manchester and Petersburg turnpike company.

35. Provided, That the said road shall not be extended within the corporation line of the town of Petersburg without the consent of a majority of the citizens thereof qualified to vote for members of the common hall of said town, in general meeting assembled, after due notice. And provided, That in the event of the said majority of citizens, within four months from the time of the organization of the company hereby incorporated, grant-

ing permission to said company to extend their said road across the Appomattox by a bridge to some convenient point on the south side of said river within the corporation nearest the depot of the Petersburg and Roanoke railroad company, the company hereby incorporated shall locate the termination of their said road accordingly.

36. This act shall be in force from its passage.

ACTS OF THE GENERAL ASSEMBLY OF VIRGINIA, SESSION 1853-54.

CHAP. 51.—An Act authorizing the issue of seven per cent. bonds by the Richmond and Petersburg railroad.

Passed February 18, 1854.

1. Be it enacted by the general assembly, that it may and shall be lawful for the Richmond and Petersburg railroad company to issue coupon bonds, bearing interest at the rate of seven per centum per annum, the principal to be payable at such time and place as may be deemed by the company most expedient, and the interest to be paid semi-annually, at such place as may be determined on for the payment of the principal of such bonds, to such extent as may be requisite to enable the said company to complete an edge rail superstructure over the whole length of their railroad, and of their branch road to Port Walthall, and for the purpose of making improvements in the structures on the line of their road, and such additions to their stock of motive power and cars as they may deem advisable: provided, that the whole amount of bonds, which shall be issued under this act, shall not exceed the sum of one hundred and fifty thousand dollars.

2. Be it further enacted, that the said company be and they are hereby authorized to sell and dispose of the bonds authorized by this act, in such mode and on such terms as they may deem advisable; and to give such security for the punctual payment of the said bonds as they may deem expedient.

3. This act shall be in force from its passage.

42 ACTS OF THE GENERAL ASSEMBLY OF VIRGINIA, SESSION 1865-66.

CHAP. 218.—An Act in relation to the Richmond and Petersburg Railroad Company.

Passed December 12, 1865.

Whereas the stockholders of the Richmond and Petersburg railroad company, in general meeting, resolved that coupon bonds be issued for the purpose of rebuilding, as speedily as possible, the James river bridge, the depot and workshops of the company, and their proceedings, for this purpose, have been approved by the board of public works; and to facilitate that purpose, further legislation seems desirable: Therefore,

1. Be it enacted by the general assembly, That the president and directors of the Richmond and Petersburg railroad company be and they are hereby authorized to issue, for and in the name of said company, coupon bonds for an amount not exceeding altogether one hundred and seventy-five thousand dollars, in sums of one thousand dollars each, dated the first day of September, eighteen hundred and sixty-five, bearing interest at the rate of eight per centum per annum, without any deduction for government, state or municipal taxes, payable—the interest semi-annually from the said first day of September, eighteen hundred and sixty-five, and the principal on the first day of September, eighteen hundred and seventy—at such place, either in or out of Virginia, as the president and directors may select; and for the purpose of securing the payment of both principal and interest, to execute, for and in the name of said company, a deed of trust or mortgage on all the works and property of said company, with such provisions as the said president and directors, in their discretion, may deem judicious; and the said president and directors may allow said bonds to be sold at a discount not exceeding ten per centum.

2. This act shall be in force from its passage.

43 ACTS OF THE GENERAL ASSEMBLY OF VIRGINIA, SESSION 1866-67.

CHAP. 74.—An Act in relation to the extension of the Petersburg and Richmond and Petersburg railroads, through the city of Petersburg.

Passed January 16, 1867.

Whereas at the last session of the general assembly two acts were passed on the third day of March, eighteen hundred and sixty-six, one authorizing the incorporation of a company to construct a connection of the Richmond, Fredericksburg and Potomac railroad, and the Richmond and Petersburg railroad, in the city of Richmond, and one authorizing the incorporation of a company to construct the connection of the Petersburg and Richmond and Petersburg railroads in the city of Petersburg; and whereas circumstances have prevented the organization of the latter named company, and in consequence the Petersburg and Richmond and Petersburg railroad companies have been compelled to construct the connecting track, in the city of Petersburg, at the joint cost of those two companies; in consideration, therefore, of the great cost, as compared with the length of this connecting track, including the erection and maintenance of a bridge across the Appomattox river, and also the increased cost of operating the same:

1. Be it enacted, That the Petersburg and the Richmond and Petersburg railroad companies be and they are hereby authorized to charge the same rate of toll upon the transportation of passengers and freight, over the track connecting their two roads in the city of Petersburg, as is allowed to be charged by the charter of the

Richmond, Fredericksburg and Potomac and the Richmond and Petersburg railroad connection company for like transportation over its connecting road in the city of Richmond, and for a like period as is allowed to said connection company. The gross amount of receipts derived from transportation over said connecting track, in the city of Petersburg, shall be divided into two equal parts: of the one-half of such gross receipts, three-fifths shall be assigned to the Petersburg railroad company for its proportion of maintenance and operating expenses of so much of such track as may be constructed by it, and two-fifths shall be assigned to the Richmond and Petersburg railroad company for its proportion of maintenance and operating expenses of so much of such track as may be constructed by it; the other half of such gross receipts to be di-
44 vided between the two companies in the ratio of each company's expenditure in the construction of said connecting track.

2. This act shall be in force from its passage.

ACTS OF THE GENERAL ASSEMBLY OF VIRGINIA, SESSION 1869-70.

CHAP. 17.—An Act authorizing the Richmond and Petersburg Railroad Company to borrow money.

Approved March 5, 1870.

1. Be it enacted by the general assembly, That the Richmond and Petersburg railroad company be and are hereby authorized to borrow, from time to time, such sums as the exigencies of the company may require, by disposing of the bonds of the company to an amount not exceeding in the aggregate the sum of one hundred and seventy-five thousand dollars, on such terms and at such rate of interest, not exceeding that permitted by the constitution of Virginia, to individuals, as may be fixed by the president and directors of the company; and for the purpose of securing the payment of both principal and interest, to execute for and in the name of said company a deed of trust or mortgage on all the works and property of said company, with such provisions as the said president and directors in their discretion may deem judicious.

2. This act shall be in force from its passage.

ACTS OF THE GENERAL ASSEMBLY OF VIRGINIA, SESSION 1897-98.

CHAP. 635.—An Act to authorize the consolidation of the Richmond and Petersburg railroad company and the Petersburg railroad company, and to authorize the consolidated company to change its name to the Atlantic Coast Line Railroad Company of Virginia.

Approved March 1, 1898.

1. Be it enacted by the general assembly of Virginia, that authority is hereby given to the Petersburg railroad company to con-

solidate with the Richmond and Petersburg railroad com-
45 pany, and authority is hereby authorized to the Richmond and Petersburg railroad company to enter into, make and carry out an agreement whereby, the said the Petersburg railroad company shall become consolidated with the said the Richmond and Petersburg railroad company.

2. That such consolidation shall be made on such terms and conditions as may be agreed to by the stockholders in each of said companies by resolutions to be adopted in a general meeting of the stockholders of each of said companies, duly called for the purpose of considering the same: provided, that such resolution shall be adopted in each of such meetings by the affirmative vote of those owning or representing at least two-thirds of the entire capital stock in each of said companies.

3. When such consolidation shall have been agreed to in the manner and form hereinbefore prescribed, then the same shall be effected by the execution and delivery of a deed from the said Petersburg railroad company to the said Richmond and Petersburg railroad company, conveying by proper description all of the property, real, personal and mixed, including the roadbed, right of way and superstructures, as well as all equipment and other personal property, and all the rights, powers, privileges and franchises of the said the Petersburg railroad company to the said the Richmond and Petersburg railroad company, subject to any and all existing liens thereon; and the said the Richmond and Petersburg railroad company shall have the right to covenant to assume, and to assume as a part of the consideration of such conveyance the payment of the principal and interest of any and all such liens; and upon the execution and delivery of such conveyance the said the Richmond and Petersburg railroad company shall immediately be and become vested with the complete and full title to all the property, rights, powers, privileges and franchises conveyed thereby, with the right to own, maintain and operate the railroads and all branches heretofore owned and operated by the two aforesaid companies as one road.

4. The Richmond and Petersburg railroad company shall have the right to carry out any agreement that may be made for the delivery of the shares of its capital stock to the holders of the shares of stock in the Petersburg railroad company in exchange for such stock on such terms and at such rate as may be agreed upon, and shall have full power and authority to purchase from the holders thereof any of the shares of stock in the Petersburg railroad company which may not be exchanged as aforesaid, and to that
46 end and for the general purposes of such company, the said the Richmond and Petersburg railroad company is hereby authorized to increase its capital stock to such an amount as may be authorized or approved by the stockholders thereof in any annual or general meeting assembled, not to exceed in the aggregate the sum of three millions of dollars, but all or any part of the two millions increase in the capital stock of said company which may be issued hereafter under the provisions of this section shall be known and designated as class B stock, and shall be subject to taxation and shall

not be exempt from taxation under the original charter of said company.

5. The said the Richmond and Petersburg railroad company, in addition to the rights which it now has as to issuing bonds, shall have the right at any time hereafter to make and issue such bonds as may be necessary to provide for the retirement of the underlying mortgages on the properties hereby consolidated and to secure the same by one or more mortgages on such terms and conditions and to such amount as may be authorized or approved by its stockholders in any annual or general meeting.

6. That notwithstanding the conveyance of the property of the said the Petersburg railroad company to the said the Richmond and Petersburg railroad company, as hereinbefore provided, the existence of the said the Petersburg railroad company as a corporation shall continue so long as any of its shares of capital stock shall not be sold to or exchanged with the said the Richmond and Petersburg railroad company, for the purpose only of protecting the interests of the said stockholders in the said company as such, and in all meetings of the said the Petersburg railroad company thereafter held, the said the Richmond and Petersburg railroad company shall have the right to represent all the stock which it may have acquired by purchase or exchange as aforesaid in the said the Petersburg railroad company, casting such vote as it may be entitled to on the number of shares so acquired by it and standing in its name on the books of the said the Petersburg railroad company, and to that end the said the Richmond and Petersburg railroad company may keep alive and hold for that purpose only, all the shares of stock in the said the Petersburg railroad company which it may acquire by purchase or in exchange as aforesaid, until it shall have acquired the whole of said stock in the said the Petersburg railroad company, when the same shall be cancelled and the existence of the said the Petersburg railroad company shall cease and be at an end.

47 7. Any stockholder of the Petersburg railroad company who shall refuse to convert his stock into the stock of the Richmond and Petersburg railroad company under the terms of the agreement of consolidation, may, on reasonable notice to said company, demand that it shall purchase the said stock at its actual value in cash, and if the price can be agreed upon, it shall be the duty of the said company to purchase and take the same; and if the price cannot be agreed upon, or the said company shall fail to take and pay for the same at the agreed price, then such stockholder may apply by petition to the circuit court of the city of Petersburg to appoint three disinterested persons to fix the value of said stock, whose award or that of a majority of them shall be final and conclusive when confirmed by the court; and it shall be the duty of the said company to take and pay for the said shares of stock at the valuation thereof as fixed by such appraisers upon its being transferred and delivered to it; and upon its failure to take and pay for the same within thirty days from the confirmation of said award, then the amount of said award shall be a judgment against the said company and collected as other judgments of said court are by law

recoverable; provided, however, that said company shall not be required to pay the said judgment except upon the surrender and delivery to it of the certificates of the said shares, properly transferred.

8. That the said the Richmond and Petersburg railroad company shall not complete the consolidation hereby authorized unless it shall release its exemption from taxation, so far as said exemption relates to taxation of its property for state purposes, by deed duly executed and delivered to the secretary of the commonwealth, who shall, at the cost of the said company, cause the same to be recorded in the clerk's office of the chancery court of the city of Richmond, and thereupon the property of the said company shall be taxable for state purposes as the property of other railroad companies. But neither this act nor the consolidation hereunder, nor the deed to be executed by the said the Richmond and Petersburg railroad company under this section, shall be construed as a release of the exemption of the property of the said the Richmond and Petersburg railroad company from county, city or municipal, or other taxation that for state purposes in or by any county, city or town in or through which the said the Richmond and Petersburg railroad company's property is now located, or as the release of any other right, franchise, privilege, or exemption conferred upon it by its charter, but shall be construed as meaning that all the property of the said company after such consolidation shall be subject to taxation by the state as other railroad companies for state purposes only. Seventy per centum only of the personal property of said consolidated company (that being the proportion of the Petersburg railroad company) shall be subject to county or municipal taxation as the law provides, and all the real estate now owned or which may hereafter be acquired on and along the present line of the Petersburg railroad company shall be subject to municipal and county taxation as the law provides; but no real estate owned by the said road which is not a part of its roadbed, right of way or used for railroad purposes shall be exempted from county, municipal or local taxes.

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9. That the legal principal office of the said the Richmond and Petersburg railroad company after such consolidation shall be in the city of Petersburg.

10. That the said company shall have the right at any time to change its name to the Atlantic Coast Line Railroad Company of Virginia by a majority vote in any annual or general meeting of its stockholders.

11. This act shall be in force from and after its passage.

AN ACT

To authorize the Atlantic Coast Line Railroad Company of Virginia to change its name, and to increase the number of its directors and officers; to authorize said company to increase its capital stock, and to issue bonds and secure the same by one or more mortgages and to authorize the leasing by it and the consolidation therewith of other corporations and to otherwise enlarge its powers.

Approved January 12, 1900.

Whereas by virtue of an act of the General Assembly of Virginia, approved March first, eighteen hundred and ninety-eight, entitled "An act to authorize the consolidation of the Richmond and Petersburg Railroad Company and the Petersburg Railroad Company, and to authorize the consolidated company to change its name to the Atlantic Coast Line Railroad Company of Virginia," the said
49 companies have been consolidated under and pursuant to the terms and conditions in said act set forth, and the said consolidated company has changed its name to the Atlantic Coast Line Railroad Company of Virginia; and Whereas the said company now desires that its powers shall be enlarged, and it is deemed desirable that such powers shall be granted on the terms hereinafter set forth:

1. Be it enacted by the General Assembly of Virginia, That in addition to the powers which it now possesses, the said Atlantic Coast Line Railroad Company of Virginia shall have, and, from time to time as occasion arises, may exercise the following powers, or any of them, namely:

(*a*) That with the approval of its stockholders, by a resolution adopted at a meeting by the affirmative vote of those owning or representing at least three-fourths of the entire capital stock of the company, it may, from time to time lease, use, operate, consolidate with itself, or purchase or otherwise acquire, any railroad or transportation company now or hereafter incorporated by the laws of the United States, or any of the States thereof, or any one or more of such railroad or transportation companies, or any other railroad or transportation company or companies, which now are or hereafter may be leased, or used or operated by, or consolidated with any one or more of such railroad or transportation companies; and from time to time it may consolidate with its capital stock, property, and franchises, by change of name or otherwise, the capital stock, property, and franchises of any other railroad or transportation company, power being hereby granted to any railroad or transportation company or companies incorporated by or under any act or acts of the General Assembly of the State of Virginia, with the approval of its stockholders by a resolution adopted at a meeting by the affirmative vote of those owning or representing at least three-fourths of the entire capital stock of the company, to make and carry out such contracts of consolidation or lease, sale, or other method of acquisition: provided, that in all consolidations a copy of the agreement therefor shall be filed in the office of the Secretary of the Common-

wealth of Virginia, and that any corporation of this State with which said Atlantic Coast Line Railroad Company of Virginia may consolidate, or which it may lease, shall remain subject to the jurisdiction of the courts of this State, and all lines of railroad operated by it in the State of Virginia shall be subject to the general laws of this State: and provided further, that any stockholder of such
50 railroad or transportation company other than the said Atlantic Coast Line Railroad Company of Virginia, who dissents from any such consolidation may, within sixty days thereafter apply by petition to the Circuit Court of the City of Richmond to determine the value of his stock and shall be entitled to receive from said Atlantic Coast Line Railroad Company of Virginia the value as thus determined of such stock upon transfer thereof to the said Atlantic Coast Line Railroad Company of Virginia.

(*b*) It may from time to time, purchase, own, and hold bonds or other evidences of debt, and shares of the capital stock of any railroad company or companies formed under the laws of this or any other State, and from time to time may guarantee or assume the bonds, evidences of indebtedness, or capital stock of any such railroad company.

(*c*) It may from time to time, acquire or guarantee the stocks and bonds, or either, of any inland, coast, or ocean transportation company or companies operating to or from any point or points on its lines; and it may develop or aid in the development of its business by acquiring or guaranteeing the stocks and bonds, or either, of hotel, lighterage, wharf, elevating, and other such enterprises convenient in connection therewith or as a part thereof.

2. That the said Atlantic Coast Line Railroad Company of Virginia shall have the power to increase its capital stock to such an amount as may be necessary for its purposes, not to exceed, however, the sum of one hundred million dollars, and to issue the same as common or preferred stock, and on such other terms and conditions as may be approved by its stockholders in meeting assembled.

3. That the said Atlantic Coast Line Railroad Company of Virginia shall have the right to borrow money and issue bonds or other evidences of indebtedness, and may secure the same from time to time by mortgage or deed of trust upon any or all of its property and franchises to such an amount as may from time to time be approved by its stockholders in meeting assembled.

4. The said company shall have the right at any time, with the approval of its stockholders by a resolution adopted at a meeting by the affirmative vote of those owning or representing at least a majority of the entire capital stock of the company, to change its name to the Atlantic Coast Line Railroad Company.

51 5. That the said company shall have the right at any time, with the approval of its stockholders by a resolution adopted at a meeting by the affirmative vote of those owning or representing at least a majority of the entire capital stock of the company, to increase the number of the directors of said company to a number not exceeding twelve, exclusive of the president, and to elect and have one or more vice-presidents of said company.

6. There shall be paid to the clerk of the county or corporation

in which any deed of trust or mortgage authorized by this act may be first presented for recordation the rate of taxation prescribed by law for the recordation of deeds of trust or mortgages upon the works and property of railroad companies lying partly in this State and partly in another State. Whenever any such deed of trust or mortgage shall have been admitted or presented for recordation in one or more counties or corporations of this State, an exemplification thereof, duly certified by the clerk of the county or corporation to be a true copy of the said deed of trust or mortgage as the same has been admitted or presented for record in his office, may, upon payment of clerical fees be admitted for record and be recorded in any one or more counties or corporations of this State, and such record and admission for record shall be as valid and as effectual for all purposes of vesting title, of evidence, and of notice as the record of the original deed or instrument is now by law held and declared to be, and a notation of the record and admission for record of any exemplified copy may be noted by the clerk on the original deed or or instrument as well as upon the exemplified copy.

7. That the acceptance of this act by the said Atlantic Coast Line Railroad Company of Virginia shall constitute a waiver and surrender of all exemptions and exclusive privileges, if any, conferred upon the Richmond and Petersburg Railroad Company, by its charter, and specially the waiver of any and all exemption from taxation which it now enjoys by virtue of any act or law of this State, and the powers granted by this act are given upon the express condition that from and after the date of its acceptance in any manner by the said company, the whole of its property in this State shall be liable to taxation as the property of other railroad corporations in this Commonwealth which are subject to taxation for State, City, County or other municipal purposes, anything in the character of the Richmond and Petersburg Railroad Company, the Petersburg
52 Railroad Company, or any amendments thereof, or in the act approved March first, eighteen hundred and ninety-eight, entitled "An act to authorize the consolidation of the Richmond and Petersburg Railroad Company and the Petersburg Railroad Company, and to authorize the consolidated company to change its name to the Atlantic Coast Line Railroad Company of Virginia," to the contrary notwithstanding.

8. All taxes and debts due or to become due to the Commonwealth of Virginia by the said Atlantic Coast Line Railroad Company shall be paid in lawful money of the United States, and not in coupons.

9. This act shall be in force from and after its passage.

STATE OF VIRGINIA, *City of Richmond, To wit:*

I, Jno. W. Williams, Clerk of the House of Delegates and Keeper of the Rolls of Virginia, do hereby certify and attest by my signature (not having a seal of office) that the foregoing copies of several acts of the General Assembly of Virginia are true copies, and together

constitute and are a true and correct copy of the Charter of the Atlantic Coast Line Railroad Company.

Given under my hand this 21st day of Sept., 1904.

JNO. W. WILLIAMS,
Clerk of the House of Delegates and
Keeper of the Rolls of Virginia.

COMMONWEALTH OF VIRGINIA:

I, A. J. Montague, Governor of the Commonwealth of Virginia, certify that Jno. W. Williams, whose name is signed to the within copies of Acts of Assembly of Virginia, constituting the Charter of the Atlantic Coast Line Railroad Company, bearing date the 21st day of September, 1904, is, and was at the time of signing, Clerk of the House of Delegates and Keeper of the Rolls of Virginia, duly elected and qualified; that he is authorized by the laws of this State to make and sign such copies of acts, and that to all his official acts full faith, credit and authority are due and ought to be given.

In testimony whereof, I have hereunto set my hand as
53 Governor, and caused the Great Seal of the Commonwealth to be affixed. Done at the City of Richmond, this 21st day of September, in the year of our Lord one thousand, nine hundred and four, and in the one hundred and twenty-ninth year of the Commonwealth.

A. J. MONTAGUE.

By the Governor:
D. Q. EGGLESTON,
Secretary of the Commonwealth
and Keeper of the Seals.

[Impressed Seal of State of Virginia.]

EXHIBIT "B."

SEC. 155. State Corporation Commission; how appointed; term of office; how vacancies filled; who ineligible; qualifications of at least one member; how removed or impeached; officers, how elected; rules of order and procedure; general provisions; salaries; election of members after January 1, 1908; how vacancies then filled.

A permanent commission, to consist of three members, is hereby created, which shall be known as the State Corporation Commission. The commissioners shall be appointed by the Governor, subject to confirmation by the General Assembly in joint session, and their regular terms of office shall be six years, respectively, except those first appointed under this Constitution, of whom, one shall be appointed to hold office until the first day of February, nineteen hundred and four, one, until the first day of February, nineteen hundred and six, and one, until the first day of February, nineteen hundred and eight. Whenever a vacancy in the commission shall occur, the Governor shall forthwith appoint a qualified person to fill the same for the unexpired term, subject to confirmation by the General As-

sembly as aforesaid. Commissioners appointed for regular terms shall, at the beginning of the terms for which appointed, and those appointed to fill vacancies shall, immediately upon their appointments, enter upon the duties of their office; but no person so appointed, either for a regular term, or to fill a vacancy, shall enter upon, or continue in, office after the General Assembly shall
54 have refused to confirm his appointment, or adjourned *sine die* without confirming the same, nor shall he be eligible for re-appointment to fill the vacancy caused by such refusal or failure to confirm. No person while employed by, or holding any office in relation to, any transportation or transmission company, or while in any wise financially interested therein, or while engaged in practicing law, shall hold office as a member of said commission, or perform any of the duties thereof. At least one of the commissioners shall have the qualifications prescribed for judges of the Supreme Court of Appeals; and any commissioner may be impeached or removed in the manner provided for the impeachment or removal of a judge of said court. The commission shall annually elect one of their members chairman of the same, and shall have one clerk, one bailiff and such other clerks, officers, assistants and subordinates as may be provided by law, all of whom shall be appointed, and subject to removal, by the commission. It shall prescribe its own rules of order and procedure, except so far as the same are specified in this Constitution or any amendment thereof. The General Assembly may establish within the department, and subject to the supervision and control, of the commission, subordinate divisions, or bureaus of insurance, banking or other special branches of the business of that department. All sessions of the commission shall be public, and a permanent record shall be kept of all its judgments, rules, orders, findings and decisions, and of all reports made to, or by, it. Two of the commissioners shall constitute a quorum for the transaction of business, whether there be a vacancy in the commission or not. The commission shall keep its office open for business on every day except Sundays and legal holidays. Transportation companies shall at all times transport, free of charge, within this State, the members of said commission and its officers, or any of them, when engaged on their official duties. The General Assembly shall provide suitable quarters for the commission and funds for its lawful expenses, including pay for witnesses summoned, and costs of executing processes issued, by the commission of its own motion; and shall fix the salaries of the members, clerks, assistants, and subordinates of the commission and provide for the payment thereof; but the salary of each commissioner shall not be less than four thousand dollars per annum. After the first day of January, nineteen hundred and eight, the General Assembly may provide for the election of the members of the commission by the qualified voters of the State; in which event, vacancies thereafter occurring shall be filled as hereinbefore provided, until the expiration of twenty days after the next general election,
55 held not less than sixty days after the vacancy occurs, at which election the vacancy shall be filled for the residue of the unexpired term.

SEC. 156. Powers, Duties and Method of Procedure of Commission.

(*a*) Subject to the provisions of this Constitution and to such requirements, rules and regulations as may be prescribed by law, the State Corporation Commission shall be the department of government through which shall be issued all charters and amendments or extensions thereof, for domestic corporations, and all licenses to do business in this State to foreign corporations; and through which shall be carried out all the provisions of this Constitution, and of the laws made in pursuance thereof, for the creation, visitation, supervision, regulation and control of corporations chartered by, or doing business in, this State. The commission shall prescribe the forms of all reports which may be required of such corporations by this Constitution or by law; it shall collect, receive, and preserve such reports, and annually tabulate and publish them in statistical form; it shall have all the rights and powers of, and perform all the duties devolving upon, the Railroad Commissioner and the Board of Public Works, at the time this Constitution goes into effect, except so far as they are inconsistent with this Constitution, or may be hereafter abolished or changed by law.

(*b*) The commission shall have the power, and be charged with the duty, of supervising, regulating and controlling all transportation and transmission companies doing business in this State, in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses therein by such companies; and to that end the commission shall, from time to time, prescribe, and enforce against such companies, in the manner hereinafter authorized, such rates, charges, classifications of traffic, and rules and regulations, and shall require them to establish and maintain all such public service, facilities and conveniences, as may be reasonable and just, which said rates, charges, classifications, rules, regulations and requirements, the commission may, from time to time, alter or amend. All rates, charges, classifications, rules and regulations adopted, or acted upon, by any such company, inconsistent with those prescribed by the commission, within the scope of its authority, shall be unlawful and void. The commission shall also have the right at all times to inspect the books and papers of all transportation and transmission companies doing business in this State, and to
56 require from such companies, from time to time, special reports and statements under oath, concerning their business; it shall keep itself fully informed of the physical condition of all the railroads of the State, as to the manner in which they are operated, with reference to the security and accommodation of the public, and shall, from time to time, make and enforce such requirements, rules and regulations as may be necessary to prevent unjust or unreasonable discriminations by any transportation or transmission company in favor of, or against, any person, locality, community, connecting line, or kind of traffic, in the matter of car service, train or boat schedule, efficiency or transportation or otherwise, in connection with the public duties of such company. Before the commission shall prescribe or fix any rate, charge, or classification of traffic, and before it shall make any order, rule, regulation or requirement directed against any one or more companies by name, the company or com-

panies to be affected by such rate, charge, classification, order, rule, regulation or requirement, shall first be given, by the commission, at least ten days' notice of the time and place, when and where the contemplated action in the premises will be considered and disposed of, and shall be afforded a reasonable opportunity to introduce evidence and to be heard thereon, to the end that justice may be done, and shall have process to enforce the attendence of witnesses; and before the commission shall make or prescribe any general order, rule, regulation or requirement, not directed against any specific company or companies by name, the contemplated general order, rule, regulation or requirement, shall first be published in substance, not less than once a week for four consecutive weeks in one or more of the newspapers of general circulation published in the city of Richmond, Virginia, together with notice of the time and place, when and where the commission will hear any objections which may be urged by any person interested, against the proposed order, rule, regulation or requirement and every such general order, rule, regulation or requirement, made by the commission shall be published at length, for the time and in the manner above specified, before it shall go into effect, and shall also, as long as it remains in force, be published in each subsequent annual report of the commission. The authority of the commission (subject to review on appeal as hereinafter provided) to prescribe rates, charges and classifications of traffic, for transportation and transmission companies, shall be paramount; but its authority to prescribe any other rules, regulations or requirements for corporations, or other persons shall be subject to the superior authority of the General Assembly to legislate thereon by general laws; provided, however, that nothing in this sec-
57 tion shall impair the right which has heretofore been, or may hereafter be, conferred by law upon the authorities of any city, town or county to prescribe rules, regulations, or rates of charge to be observed by any public service corporation in connection with any services performed by it under a municipal or county franchise granted by such city, town or county, so far as such services may be wholly within the limits of the city, town or county granting the franchise. Upon the request of the parties interested, it shall be the duty of the commission, as far as possible, to effect, by mediation, the adjustment of claims, and the settlement of controversies, between transportation or transmission companies and their patrons.

(c) In all matters pertaining to the public visitation, regulation or control of corporations, and within the jurisdiction of the commission, it shall have the powers and authority of a court of record, to administer oaths, to compel the attendance of witnesses and the production of papers, to punish for contempt any person guilty of disrespectful or disorderly conduct in the presence of the commission while in session, and to enforce compliance with any of its lawful orders or requirements by adjudging, and enforcing by its own appropriate process, against the delinquent or offending company (after it shall have been first duly cited, proceeded against by due process of law before the commission sitting as a court, and afforded opportunity to introduce evidence and to be heard, as well against the validity, justness or reasonableness of the order or requirement

alleged to have been violated, as against the liability of the company for the alleged violation), such fines or other penalties as may be prescribed or authorized by this Constitution or by law. The commission may be vested with such additional powers, and charged with such other duties (not inconsistent with this Constitution) as may be prescribed by law, in connection with the visitation, regulation or control of corporations, or with the prescribing and enforcing of rates and charges to be observed in the conduct of any business where the State has the right to prescribe the rates and charges in connection therewith, or with the assessment of the property of corporations, or the appraisement of their franchises, for taxation, or with the investigation of the subject of taxation generally. Any corporation failing or refusing to obey any valid order or requirement of the commission, within such reasonable time, not less than ten days, as shall be fixed in the order, may be fined by the commission (proceeding by due process of law as aforesaid) such sum, not exceeding five hundred dollars, as the commission may deem proper, or such sum, in excess of five hundred dollars, as may be prescribed,
58 or authorized, by law; and each day's continuance of such failure or refusal, after due service upon such corporation of the order or requirement of the commission, shall be a separate offense: provided, that should the operation of such order or requirement be suspended pending an appeal therefrom, the period of such suspension shall not be computed against the company in the matter of its liability to fines or penalties.

(*d*) From any action of the commission prescribing rates, charges or classifications of traffic, or affecting the train schedule of any transportation company, or requiring additional facilities, conveniences or public service of any transportation or transmission company, or refusing to approve a suspending bond, or requiring additional security thereon or an increase thereof, as provided for in subsection *c* of this section, an appeal (subject to such reasonable limitations as to time, regulations as to procedure and provisions as to costs, as may be prescribed by law) may be taken by the corporation whose rates, charges or classifications of traffic, schedule, facilities, conveniences or service, are affected, or by any person deeming himself aggrieved by such action, or (if allowed by law) by the Commonwealth. Until otherwise provided by law, such appeal shall be taken in the manner in which appeals may be taken to the Supreme Court of Appeals from the inferior courts, except that such an appeal shall be of right, and the Supreme Court of Appeals may provide by rule for proceedings in the matter of appeals in any particular in which the existing rules of law are inapplicable. If such appeal be taken by the corporation whose rates, charges or classifications of traffic, schedules, facilities, conveniences or service are affected, the Commonwealth shall be made the appellee; but, in the other cases mentioned, the corporation so affected shall be made the appellee. The General Assembly may also, by general laws, provide for appeals from any other action of the commission, by the Commonwealth or by any person interested, irrespective of the amount involved. All appeals from the commission shall be to the Supreme

Court of Appeals only; and in all appeals to which the Commonwealth is a party, it shall be represented by the Attorney-General or his legally appointed representative. No court of this Commonwealth (except the Supreme Court of Appeals, by way of appeals as herein authorized), shall have jurisdiction to review, reverse, correct or annul any action of the commission, within the scope of its authority, or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the commission in the performance
59 of its official duties: provided, however, that the writs of mandamus and prohibition shall lie from the Supreme Court of Appeals to the commission in all cases where such writs, respectively, would lie to any inferior tribunal or officer.

(*c*) Upon the granting of an appeal, a writ of supersedeas may be awarded by the appellate court, suspending the operation of the action appealed from until the final disposition of the appeal; but, prior to the final reversal thereof by the appellate court, no action of the commission prescribing or affecting the rates, charges or classifications of traffic of any transportation or transmission company shall be delayed, or suspended, in its operation, by reason of any appeal by such corporation, or by reason of any proceedings resulting from such appeal, until a suspending bond shall first have been executed and filed with, and approved by, the commission (or approved on review by the Supreme Court of Appeals), payable to the Commonwealth, and sufficient in amount and security to insure the prompt refunding, by the appealing corporation to the parties entitled thereto, of all charges which such company may collect or receive, pending the appeal, in excess of those fixed, or authorized, by the final decision of the court on appeal. The commission, upon the execution of such bond, shall forthwith require the appealing company, under penalty of the immediate enforcement (pending the appeal and notwithstanding any supersedeas), of the order or requirement appealed from, to keep such accounts, and to make to the commission, from time to time, such reports, verified by oath, as may, in the judgment of the commission, suffice to show the amounts being charged or received by the company, pending the appeal, in excess of the charge allowed by the action of the commission appealed from, together with the names and addresses of the persons to whom such overcharges will be refundable in case the charges made by the company pending the appeal, be not sustained on such appeal; and the commission shall also, from time to time, require such company, under like penalty, to give additional security on, or to increase, the said suspending bond, whenever, in the opinion of the commission, the same may be necessary to insure the prompt refunding of the overcharges aforesaid. Upon the final decision of such appeal, all amounts which the appealing company may have collected, pending the appeal, in excess of that authorized by such final decision, shall be promptly refunded by the company to the parties entitled thereto, in such manner, and through such methods of distribution, as may be prescribed by the commission, or by law. All such appeals affecting rates, charges or classifi-
60 cations of traffic, shall have precedence upon the docket of the appellate court, and shall be heard and disposed of promptly

by the court, irrespective of its place of session, next after the *habeas corpus*, and Commonwealth's, cases already on the docket of the court.

(*f*) In no case of appeal from the commission shall any new or additional evidence be introduced in the appellate court; but the chairman of the commission, under the seal of the commission, shall certify to the appellate court all of the facts upon which the action appealed from was based and which may be essential for the proper decision of the appeal, together with such of the evidence introduced before, or considered by, the commission as may be selected, specified and required to be certified, by any party in interest, as well as such other evidence, so introduced or considered, as the commission may deem proper to certify. The commission shall, whenever an appeal is taken therefrom, file with the record of the case, and as a part thereof, a written statement of the reasons upon which the action appealed from was based, and such statement shall be read and considered by the appellate court, upon disposing of the appeal. The appellate court shall have jurisdiction, on such appeal, to consider and determine the reasonableness and justness of the action of the commission appealed from, as well as any other matter arising under such appeal: provided, however, that the action of the commission appealed from shall be regarded as *prima facie* just, reasonable and correct; but the court may, when it deems necessary, in the interest of justice, remand to the commission any case pending on appeal, and require the same to be further investigated by the commission, and reported upon to the court (together with a certificate of such additional evidence as may be tendered before the commission by any party in interest), before the appeal is finally decided.

(*g*) Whenever the court, upon appeal, shall reverse an order of the commission affecting the rates, charges or the classification of traffic of any transportation or transmission company, it shall, at the same time, substitute therefor such order as, in its opinion, the commission should have made at the time of entering the order appealed from; otherwise, the reversal order shall not be valid. Such substituted order shall have the same force and effect (and none other) as if it had been entered by the commission at the time the original order appealed from was entered. The right of the commission to prescribe and enforce rates, charges, classifications, rules and regulations, affecting any or all actions of the commission theretofore entered by it and appealed from, but based upon circum-
61 stances or conditions different from those existing at the time the order appealed from was made, shall not be suspended or impaired by reason of the pendency of such appeal; but no order of the commission, prescribing or altering such rates, charges, classifications, rules or regulations, shall be retroactive.

(*h*) The right of any person to institute and prosecute in the ordinary courts of justice, any action, suit or motion against any transportation or transmission company, for any claim or cause of action against such company, shall not be extinguished or impaired, by reason of any fine or other penalty which the commission may impose, or be authorized to impose, upon such company because of its

breach of any public duty, or because of its failure to comply with any order or requirement of the commission; but, in no such proceeding by any person against such corporation, nor in any collateral proceeding, shall the reasonableness, justness or validity of any rate, charge, classification of traffic, rule, regulation or requirement, theretofore prescribed by the commission, within the scope of its authority, and then in force, be questioned: provided, however, that no case based upon or involving any order of the commission shall be heard, or disposed of, against the objection of either party, so long as such order is suspended in its operation by an order of the Supreme Court of Appeals as authorized by this Constitution or by any law passed in pursuance thereof.

(*i*) The commission shall make annual reports to the Governor of its proceedings, in which reports it shall recommend, from time to time, such new or additional legislation in reference to its powers or duties, or to the creation, supervision, regulation or control of corporations, or to the subject of taxation, as it may deem wise or expedient, or as may be required by law.

(*j*) [No sub-div. "*j*" in official copy.]

(*k*) Upon the organization of the State Corporation Commission, the Board of Public Works and the office of Railroad Commissioner, shall cease to exist; and all books, papers and documents pertaining thereto, shall be transferred to, and become a part of the records of, the office of the State Corporation Commission.

(*l*) After the first day of January, nineteen hundred and five, in addition to the modes of amendment provided for in
62 Article Fifteen of this Constitution, the General Assembly, upon the recommendation of the State Corporation Commission, may, by law, from time to time, amend sub-sections *a* to *i*, inclusive, of this section, or any of them, or any such amendment thereof: provided, that no amendment made under authority of this sub-section shall contravene the provisions of any part of this Constitution other than the sub-sections last above referred to or *or* any such amendment thereof.

Exhibit "C."

Before the Honorable State Corporation Commission.

Richmond, Va.

In the matter of a proposed rule, regulation, order or requirement of the Commission fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers over the lines of any railroad in this State, operated by steam, between points within the State of Virginia.

Answer of the Atlantic Coast Line Railroad Company.

The Atlantic Coast Line Railroad Company respectfully shows that on the 1st day of August, 1906, the Honorable State Corporation Commission of Virginia caused to be published in the *Times-*

Dispatch a newspaper published in the City of Richmond, a notice addressed to the several steam railroad companies doing business in Virginia, and all persons interested, that it would, on the 1st day of November, 1906, at 12 o'clock noon, hear and consider any objection which may be urged against a rule, regulation, order or requirement of the Commission fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers over the line of any railroad company in this State, operated by steam, between points within the State of Virginia, said maximum rate to be observed whether the transportation be entirely over the line of one railroad company or joint transportation over the lines of two or more companies; and whether the contract for the transportation of the passenger or passengers be evidenced by an ordinary ticket between stations, by a mileage book or otherwise; the Commission to have, as authorized by law, the power and authority from
63 time to time, and as often as circumstances may require, to change or revise the rate; or by rules, regulations and requirements to provide for the more convenient and expedient putting into effect and proper observance of said maximum rate. At said hearing and consideration of the said maximum rate of two cents per mile, the method, time and extent of promulgating and putting into effect the same will be heard and determined by the Commission, to the end that a maximum rate for passenger transportation may be put into effect and be made applicable to all steam railroad companies doing business in Virginia, and be properly observed by them in the transportation of passengers.

Pursuant to said notice, the Atlantic Coast Line Railroad Company appears and respectfully shows cause why said proposed rule, regulation, order or requirement should not be put into effect on its railroad lines.

First. (1.) That the power, authority and action of the Honorable State Corporation Commission of Virginia, in issuing the notice first above referred to in reference to said proposed rule, regulation, order or requirement, are based upon certain public enactments by the people of Virginia, in Convention assembled, proclaimed as effective on the 10th day of July, 1902, and in their General Assembly convened as, from the present Constitution and statutes enacted pursuant thereto, to which special reference is hereby made as fully as if the same were herein at length set forth, will fully and at length appear; that sections 155 and 156 of said Constitution of Virginia, and the various acts of the Legislature of Virginia, subsequently enacted pursuant to said Constitution, under which the Honorable State Corporation Commission of Virginia is organized, do not and cannot constitute or afford due process of law within the meaning of the Fourteenth Amendment to the Constitution of the United States; that the said Constitutional provisions and acts of the General Assembly of Virginia, pursuant thereto, seek to confer upon this Honorable Commission, legislative, judicial and executive powers and functions in respect to the same matter, and in addition to not constituting due process of law, do not afford this respondent the equal protection of the laws within the meaning of said Fourteenth Amendment; and this respondent shows that Section 5 of the Bill of

Rights of Virginia, which, in the present Constitution of that State, is declared to be the basis and foundation of government, provides, "That the legislative, executive and judicial departments of the State should be separate and distinct;" and that the 39th section of the Constitution provides, "Except as hereinafter provided, the legislative, executive and judiciary departments shall be separate
64 and distinct, so that neither exercise the powers properly belonging to either of the others, nor any person exercise the power of more than one of them at the same time." The single exception alluded to in Section 39 of said Constitution embraces matters pertaining to transportation and transmission companies relating to the performance of their public duties and their charges therefor. While, therefore, for the protection of every other interest in Virginia, a judicial tribunal is provided by the Constitution and Laws of the State, which is not clothed with legislative and executive functions with respect to matters in which it is required to exercise judicial functions, this protection is denied to this respondent and all other transportation companies in respect to their public duties.

In respect to transmission and transportation companies, this Honorable Commission has been established by the Constitution of Virginia, which seeks to impose, and if valid, does impose upon the Commission the duty, or invest it with the power of instituting proceedings before itself in respect to the public duties of transmission and transportation companies without any party complainant except the Commission itself; of legislating thereon and declaring what shall be the rule of action in respect thereto; of exercising judicial functions as a court in respect to the law or rule of action thus established; and of exercising administrative or executive functions in regard to the same subject matter. The same tribunal in respect to the same subject matter and the same party defendant exercises the legislative function of declaring what the future law shall be; the judicial function in declaring that law constitutional and valid, and enforcing compliance with its orders and adjudging against the defendant fines or penalties prescribed or authorized by the Constitution and the statutes; and the administrative or executive function of enforcing penalties and collecting fines by it adjudged to be imposed.

This respondent, therefore respectfully submits that, by the law of its creation, this Honorable Commission is made incapable of that judicial consideration and action in respect to this defendant and all other transportation and transmission companies in a like situation which due process of law requires; and respectfully submits further, that in subjecting such transportation and transmission companies to the tribunal thus created and denying to them the protection of judicial tribunals which are not clothed with legislative and executive functions with respect to the same matter in which they are called upon to exercise their judicial functions, such as are provided
for every other person in the State of Virginia by its Constitu-
65 tion and laws, the said Constitution and the statutes above referred to not only do not constitute, in respect to transmission and transportation companies due process of law, but deny to them the equal protection of the law, contrary to the Fourteenth Amend-

ment to the Constitution of the United States, the benefit and protection of which the Atlantic Coast Line Railroad Company now respectfully invokes in the premises.

(2) Furthermore, it will be seen by an inspection of said Section 156 of the Constitution and the acts of the Legislature of Virginia, above referred to, that, if this respondent fails to obey any valid order or requirement of the Commission within such reasonable time, not less than ten days, as shall be fixed in the order, it may be fined by the Commission on notice such sum not exceeding five hundred dollars, as the Commission may deem proper, or such sum in excess of five hundred dollars as may be prescribed or authorized by law, and each day's continuance of such failure, after due notice of such order, is made a separate offense, so that this respondent is deterred from the effort to have legally and judicially determined what order is valid by the stress of the risk of excessive, extreme and cumulative fines and penalties, and is under the duress of submitting to an order which the courts may hold invalid, rather than take the chances of the excessive fines and penalties imposed for the failure to comply with the said order, and thus this respondent is deprived of the equal protection of the laws, in violation of Section 1, Article 14 of the amendment to the Constitution of the United States, the imposition of said excessive fines and penalties being also prohibited by the eighth amendment to the Constitution of the United States.

Second. This respondent, the Atlantic Coast Line Railroad Company, is a railroad corporation, incorporated, organized and existing pursuant to and under the Act of the General Assembly of Virginia, passed March 14th, 1836, entitled "An act incorporating the stockholders of the Richmond and Petersburg Railroad Company," and under certain other acts of said General Assembly of Virginia, which will appear by a duly certified copy of the said acts, constituting the charter of the said Atlantic Coast Line Railroad Company, which is herewith filed as a part of this answer, marked Exhibit "A," and the said certified copy is made by the laws of the State of Virginia conclusive evidence of the existence of such corporation; that pursuant to clause 4 of the one of said acts approved January 12th, 1900, the name of this respondent was shortly thereafter changed to its present name, viz.: "Atlantic Coast Line Railroad Com-

66 pany;" that this respondent became a railroad corporation, duly organized, shortly after March 14th, 1836, and has ever since been and is now a railroad corporation existing and doing business under the said acts of the General Assembly of Virginia and the laws of Virginia, and owning and operating a system of railroads in the States of Virginia, North Carolina, South Carolina, Georgia, Florida, and Alabama, the aggregate mileage of which is 4,333.44 miles, and of which the mileage in Virginia is 128.07 miles; of the mileage in Virginia, 73.42 *is* main line from Richmond *via* Petersburg to the North Carolina line, and 34.38 miles *is* main line from Pinner's Point to the North Carolina line, and branches are: James River branch, 4.55 miles; Petersburg branch, 6.51 miles; Pig's Point branch, Norfolk County, 6.53 miles; branch to S. & R. R. R., Norfolk County, 1.13 miles; and branch to Bennett's Pasture, Nansemond County, 1.55 miles.

Third. That the regular passenger rates, fares and charges as now established and in force for movement wholly within the State of Virginia, and also the interstate movement through and into and out of the State of Virginia in transit, are substantially the same as the passenger rates, fares and charges established and in force during the year ending June 30th, 1905, and will be given in evidence; and that the passenger rates and fares charged by the said Atlantic Coast Line Railroad Company for the transportation of passengers on its said lines in Virginia are reasonably low and fair to the public, and are, in all respects, just and reasonable.

Fourth. That the effect of the application of the proposed rule, regulation, order or requirement, of the Commission fixing and prescribing a maximum rate or charge of two cents per mile for the intrastate transportation of passengers in Virginia, will be to materially and greatly change the rates of toll established by this respondent, and thereby cause a loss of revenue to this respondent of not less than the sum of $17,000 per annum, which amount this respondent is able to figure with reasonable accuracy, but a much greater loss will be caused to this respondent as hereinafter indicated, and that it will not be possible for the said Atlantic Coast Line Railroad Company, in the operations of its lines in Virginia, to reimburse itself for the loss which will be sustained by it consequent upon the establishment of the maximum two cents per mile passenger rate as proposed.

Fifth. This respondent, for further and additional cause why the said proposed rule, regulation, order or requirement of
67 this Honorable Commission should not be put into effect as to it, respectfully shows that to reduce its rates, fares or charges for the transportation of passengers as proposed, would be confiscatory; would reduce its earnings below what reasonable passenger rates, fares and charges would produce; deprive this respondent of its property without just compensation, and without due process of law, and deny to it the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States, as will appear from the considerations hereinafter next set forth.

The existing passenger rates, fares and charges upon this respondent's lines in the State of Virginia and applicable to intrastate business in said State, are not higher than is just and reasonable, whether considered in respect to the value of the property used in the public service, or in respect to the value of the service rendered to the passengers.

This respondent further shows that the effect of said reduction in its passenger rates, fares and charges so proposed to be put into effect by this Honorable Commission upon the business of this respondent, the movement of which is wholly within the State of Virginia, and does not pass out of said State *en route*, for the year ending June 30th, 1905, which is fairly representative of the general effect upon the business of this respondent for other years, is as follows:

This respondent further shows its total gross intrastate earnings in Virginia, from all sources, under the existing classifications, rates and charges, for the fiscal year which ended June 30th, 1905, as follows:

Gross freight earnings.....	.....	$133,419.31
" passenger "	$117,242.33	
" mail "	15,727.18	
" express "	19,698.87	
" miscellaneous "	22,311.71	
		174,980.09
Total gross intrastate earnings..	.....	$308,399.40
The minimum cost of earning this gross local or intrastate revenue is not less than 75% of the total, which makes as a minimum cost applicable.....	.....	231,299.55
Maximum present net earnings from same (without deduction of taxes, cost of improvements and betterments not capitalized, or interest charges or dividends)	.....	$77,099.85
68 Brought forward	.....	$77,099.85

The taxes for the year ending June 30th, 1904 (the figures for 1905 are larger but were not, at the time this statement was made, accurately ascertainable), in Virginia, charged to and paid by this respondent, were $40,894.27; of this sum not less than two-thirds of the taxes on the physical property, and 1% on the gross intrastate earnings are properly chargeable to the intrastate earnings, as if this respondent did no interstate business and had its lines built and equipped to do intrastate business only; such taxes to be deducted would be as follows:

Total taxes in Virginia paid.....	$40,894.27	
Deduct the franchise tax.....	6,265.57	
Taxes on physical and tangible property	$34,628.70	
Two-thirds of this, chargeable to intrastate plant and equipment is.....	23,085.80	
Add 1% franchise tax on gross intrastate earnings	3,085.60	
Taxes on intrastate property.....	26,171.40	26,171.40
Actual net intrastate earnings, after deducting taxes	.....	50,928.45

69	Brought forward	50,928.45
	Under the proposed classification, rates and charges the difference in revenue for the same business, for the same year, shown by applying the proposed rates and classification to each item handled last year, would be $14,831.25 less than under existing rates and classifications; so that under the proposed classification and rates the net earnings, after payment of taxes, would be as follows:	
	Actual net earnings, after payment of taxes as above	50,928.45
	Deduct loss to accrue from proposed rates, &c. (freight)	14,831.25
		36,097.20
	Add 1% franchise tax on amount of reduction in gross earnings, $14,831.25	148.31
	Total net intrastate earnings, after *after* paying taxes, under proposed rates, &c. (not including supplement)	36,245.51
	Deduct amount of further reduction in revenue from application of freight rates proposed by Virginia State Corporation Commission under supplement to Virginia Classification No. 1	233.60
	Total net instrastate earnings, without reduction of passenger rates	36,011.91
	Deduct reduction in revenue, consequent upon proposed fixing of maximum passenger rate at two cents per mile	17,000.00
70	Brought forward	17,000.00
	Balance total net intrastate earnings, after paying taxes, if proposed reductions in freight and passenger rates shall be put into effect (without paying any interest on bonded debt or dividends)	$19,011.91
	Now the *ad valorem* assessment by the State of Virginia upon the physical properties of this respondent for the year ending June 30, 1905, was	$2,881,749.00

Not less than two-thirds of this represents the value of the property if built, equipped and used for intrastate business only, and is.....	$1,921,166.00
The franchise tax of $3,085.60 on the intrastate gross earnings, capitalized at 35 cents on the $100, would produce	881,600.00
Total tax valuation for intrastate road..	$2,802,766.00

Upon this tax valuation of $2,802,766.00 the net Virginia intrastate earnings of $50,928.48, for year ending June 30th, 1905, under existing classification and rates (no bond interest or stock dividends being allowed for) now yields this respondent only 1.81 per cent.; and, upon the same valuation, the Virginia intrastate net earnings, under the proposed classification and rates, for freight being $36,245.51, above shown, would yield to this respondent only 1.29%; and, upon the proposed classification and rates for freight, and the proposed reduction in passenger rates, upon the same valuation, the Virginia intrastate net earnings would yield to this respondent only 68-100 of one per cent. If the franchise taxes on the intrastate earnings and only one-third of the taxes on physical property in Virginia were charged to the intrastate earnings, making the taxes charged against the intrastate road $14,628.50, and the intrastate net earnings $30,554.81, the result would be, upon the basis of the proposed classification and freight and passenger rates 1.1% only upon the value of the property as an intrastate road.

71 This respondent respectfully shows that, upon investigation, it will be found that practically the relative average values of the physical property essential to the conduct of intrastate and interstate railroad business is two-thirds for intrastate and one-third for interstate business—that is, a properly built and equipped road for intrastate business only will cost two-thirds of a sum sufficient to build and equip the same road for both interstate and intrastate business; and this respondent further shows that, after making every proper and just deduction and allowance for the difference in value and cost of the physical properties, essential to operate an intrastate, and an interstate as well as intrastate, road, the allegation as to relative cost just hereinbefore made, is justified by the facts as to the property values and cost thereof of this respondent in Virginia; and this respondent shows that the cost of reproducing the physical property in Virginia of this respondent, including rolling stock essential and now used, and as the same is now made, equipped and used for both intrastate and interstate business, would be at least the sum of $5,549,221.33; and that the cost of reproducing the same, making due and fair allowance for difference under requisite requirements in all respects, for use and operation of an intrastate railroad only, would be at least $3,711,481.00, the figure last named being only $12,000.12 in excess of two-thirds of the above-stated total cost of $5,549,221.33 for an interstate and intrastate road; and this respondent further shows that it will adduce evidence proving the correctness of these estimates of cost and value.

And this respondent further shows, that upon the basis last named

of the cost and value of this respondent's physical property in Virginia, considered as an intrastate railroad only, the net revenue from intrastate earnings (after the payment of taxs, but without paying any interest on bonds or dividend on stock) under the present classification and freight and passenger rates is only 1.37%, based on property value of $3,711,481.00, and net earnings of $50,928.45; and if the same property value be taken and the net earnings of $19,011.91, under the proposed classification and freight and passenger rates, be used, the net revenue to be yielded to this respondent will be only one-half of one per cent.

This respondent further shows, that if it owned no physical property in Virginia, except its road-bed and track of 128.07 miles, discarding all other property, the value of the same at $10,000.00 per mile, (which is less than two-thirds of its actual valuation for taxation), would be $1,280,700.00, upon which the net intrastate earnings of $19,011.91 would yield an earning of less than 1½ per cent.

72 Upon all these various valuations, the earnings, even at present rates and classification, from this respondent's intrastate business in Virginia, amount to very small and unreasonable percentages upon cost or value, and those percentages will be, as shown, still smaller under the proposed classification and rates, and this without allowing anything for payment of interest upon bonded indebtedness or dividends on stock. Neither of the returns is a reasonable profit upon the invested capital.

This respondent further shows, (as of June 30th, 1905,) that its mortgage bonded debt upon its physical property in Virginia is.....	.....	$4,246,515.70
and that its fixed indebtedness by 4% Certificates of Indebtedness (not secured by mortgage) is $4,939.91 per mile of its entire line, so that on its 128.07 miles in Virginia there is applicable	.....	632,654.27
		$4,879,169.90
on which the annual interest charge is:		
on the bonds.....	$207,420.59	
on the certificates.....	25,306.17	
		232,726.76
The earnings from intrastate traffic in Virginia should contribute its pro rata (17%) proportion to the payment of such interest charge, viz., the sum of.	.....	39,563.55
but the total net earnings from intrastate traffic in Virginia at present rates, was only $50,928.45, and under the proposed classification and freight and passenger rates will be only.....	.....	19,011.91
which will leave a deficiency of.....	.....	20,551.64

and leave no return whatever upon the stock.

As of June 30th, 1905, the amount of stock of this respondent apportionable to Virginia upon the mileage basis is, at $10,900.38 per mile, and 128.07 miles, the sum of $1,396,011.67. (It is more now.)

73 This respondent, therefore, respectfully shows that the result of the application of the proposed rule, regulation, order or requirement of the Commission, fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers would be confiscatory; reduce its earnings below what reasonable passenger rates, fares and charges would produce; deprive this respondent of its property without just compensation, and without due process of law, and deny to it the equal protection of the laws, all contrary to the Fourteenth Amendment to the Constitution of the United States, the benefit and protection of which this respondent respectfully claims.

Sixth. This respondent, for further and additional cause why the said proposed rule, regulation, order or requirement of the Commission, fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers should not be put into effect as to it, respectfully shows; that on the 3rd day of August, 1905, proceedings were instituted against this respondent under the style of The Commonwealth of Virginia at the relation of the Corporation Commission, *ex.* The Atlantic Coast Line Railroad Company and other railroads, in the matter of proposed new classification and schedule of rates, wherein this respondent, along with the other companies named, was cited to appear before the Honorable State Corporation Commission of Virginia, and show cause why certain classification of traffic, rates and charges, filed with and made a part of said notice, dated the 3rd day of August, 1905, should not be put into effect on its railroad lines, and pursuant to said notice, this respondent, along with certain other companies duly appeared and filed its answer, and supplementary answer showing cause why, as it was advised, the said proposed classification, rates and charges should not be put into effect, and will introduce evidence sustaining its said answers, all of which will appear fully from the records of this Honorable Commission, to which this respondent now respectfully begs leave to refer.

The purpose of the said proceedings, originating on the 3rd day of August, 1905, as aforesaid, was to provide for certain reductions in the freight classification, rates and charges of this respondent and the other railroads affected by said notice and doing business in Virginia, and the result of the application of the proposed classification, rates and charges upon the revenues of this respondent derived from its carriage and transportation of intrastate freight, (that is, to say, freight the movement whereof originates and terminates at points,

74 both of which are within the State of Virginia, and which does not pass out of the State of Virginia in transit), showed a loss of revenue to this respondent on said intrastate freight business alone, of not less than the sum of $15,064.85 per annum, which would have left a deficit, after the payment of operating expenses and taxes, chargeable to Virginia, and after the payment of Virginia's proper proportion of interest charges, of not less than $3,317.98.

As heretofore shown in the next preceding article of this answer, the application of the proposed rule, regulation, order or requirement of the Commission fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers, would greatly reduce the passenger rates, fares and charges in effect upon the lines of this respondent, thereby causing a loss of revenue to this respondent of not less than the sum of $17,000.00 per annum upon its passenger business alone.

And, as also heretofore shown in said next preceding article of this answer, after the payment of operating expenses and taxes, and after the payment of Virginia's proper proportion of interest charges, would leave a deficit of not less than the sum of $20,551.64.

This respondent now respectfully and earnestly submits that it would not be fair or just to consider the question of reducing its passenger rates, fares and charges disassociated and unconnected with the question of reducing its freight classification, rates and charges in the proceedings now pending before this Honorable Commission, and this respondent respectfully refers to its answers filed in the matter of the proposed new freight classification and schedule of rates, wherein it stated that it was then advised and believed that the theory upon which said proceedings were instituted and being conducted by this Honorable Commission, was, that this respondent should continue to receive the benefit of its existing passenger rates, fares and charges, which would remain unchanged and unaffected, and that in its answers filed by this respondent in those proceedings, that fact was taken as a concessum, and its answers based upon that theory.

This respondent now respectfully shows that these proceedings to reduce its existing passenger rates, fares and charges have been instituted, as aforesaid, under date of August 1, 1906, and that it is manifest that this respondent was mistaken when it averred that the theory upon which said proceedings relating to the freight classification, rates and charges was being conducted by this Honorable Commission, was that this respondent should continue to receive the benefit of its existing passenger rates, fares and charges, which would remain unchanged and unaffected.

75 This respondent now respectfully submits that it being the purpose of this Honorable Commission to take up, consider and determine the matter of reduction in its passenger rates, fares and charges, it would be unjust and error for it to further hear this proceeding or enter any final order herein without concurrently hearing, considering and determining the matters presented and involved in each of said proceedings, that is to say, the proposed reduction in its freight revenues at the same time with the proposed reduction in its passenger revenues, as fully appears from the facts and reasons hereinbefore stated.

Seventh. For further cause against the adoption and promulgation of the proposed rule, regulation, order or requirement of the Commission fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers, this respondent shows that its present passenger rates, fares and charges are not higher than a reasonable compensation for the service rendered by it to the passengers and are in no sense excessive or extor-

tionate, and in no way violate any law. This respondent is advised that it has, as an incident of its property and as a property right, the right to charge for each service which it renders a reasonable compensation, and this respondent is protected by the Fourteenth Amendment to the Constitution of the United States in making, receiving and collecting such charge.

The effect of the proposed rule, regulation, order or requirement of the Commission, fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers, will be to materially reduce this respondent's charges, and to reduce them greatly below what would be a reasonable compensation for the service rendered to the passengers.

This respondent is advised that to prevent it from charging a reasonable compensation for the service rendered to the passengers would be to deprive it of its property without just compensation, and without due process of law, and would deny to it the equal protection of the laws; and this respondent again claims in this regard the benefit and protection of the Fourteenth Amendment to the Constitution of the United States, and shows that, if the proposed rule, regulation, order or requirement of the Commission, fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers, is put into effect by this Honorable Commission, the result would be as aforesaid, to deprive it of its property, contrary to the Fourteenth Amendment to the Constitution of the United States.

76 Eighth. This respondent, for further and additional cause, why said proposed rule, regulation, order or requirement of the Commission fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers should not be put into effect as to it, respectfully shows that the regular interstate local passenger rates, fares and charges as now established and in force on the lines of this respondent between the States of Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama, are substantially the same as the passenger rates, fares and charges in force in Virginia during the year ending June 30, 1905, and are shown in detail in the tariffs published and filed in accordance with law, with the Interstate Commerce Commission.

In addition to said interstate local passenger tariffs, there are also filed with the Interstate Commerce Commission interline interstate passenger tariffs for through rates or fares between this respondent and other connecting railroad companies for use in through interstate movement, some of which tariffs apply to movements from Virginia points to points beyond, and others, of which tariffs apply to movements from points beyond to points within and through the State of Virginia. And this respondent respectfully shows that the application of said proposed rule, regulation, order or requirement of the Commission fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers on the lines of this respondent in Virginia, would necessarily result in the disturbance and regulation of interstate rates now established and in effect, and would render absolutely null and void its interstate

passenger tariffs on file with the Interstate Commerce Commission and controlled and regulated by and under the laws of the United States, and would enable interstate passengers to, at will, obtain interstate transportation from this respondent at less or different compensation from the lawful rates, fares and charges filed and published in accordance with the Act of the United States, entitled "An Act to Regulate Commerce, as amended June 29th, 1906."

And this respondent further shows that under the Constitution of the United States, paragraph 3, section VIII., Article 1, Congress alone has the power to regulate commerce between the States, the benefit and protection of which this respondent now respectfully invokes in the premises.

This respondent further shows that a very much greater loss than it has heretofore shown would be caused to it if the proposed rule, regulation, order or requirement of the Commission, fixing and prescribing a maximum rate or charge of two cents per mile
77 for the transportation of passengers was put into effect over the lines of this respondent in Virginia and between points, both of which are within the State of Virginia, because interstate passengers would use the intrastate two-cent rate for the distances traveled in the State of Virginia, and would use this respondent's regular interstate rates as promulgated and filed with the Interstate Commerce Commission as aforesaid, for the balance of the interstate trip on this respondent's road, thus causing to this respondent a very great loss in its interstate business, which loss alone, as this respondent is advised and believes, would greatly exceed the loss heretofore shown on its intrastate passenger business, and would amount to the sum or loss of approximately $46,000.00 additional to this respondent; and this respondent would be powerless to prevent this loss of revenue to it, and also powerless to prevent the infraction of the United States law in the premises by transporting said interstate passenger at a less or different compensation between the points named in such passenger tariffs published and filed as aforesaid with the Interstate Commerce Commission, than the rates, fares and charges specified in said tariffs filed and in effect at the time of said transportation; unless this respondent should reduce its interstate rates to two cents per mile. This respondent, therefore, respectfully submits that any State law or any rule, regulation, order or requirement of any State Commission, which thus forces an interstate carrier to regulate its interstate rate by the intrastate rates, prescribed by such law or by such State Commission clearly and directly regulates interstate commerce.

Wherefore, this respondent, the Atlantic Coast Line Railroad Company, now respectfully shows, as hereinbefore above stated:

That its passenger rates, fares and charges, as now established, are, in themselves, just and reasonable, and that the passenger rates, fares and charges as proposed to be promulgated are, in themselves, unjust and unreasonable:

That to promulgate said proposed rule, regulation, order or requirement of the Commission fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passen-

gers, made a part of the notice first hereinabove referred to, would be confiscatory; would deprive this respondent of its property without due process of law; take away its property without just compensation; deny to it the equal protection of the laws; regulate commerce between the States, and, therefore, and for the reasons shown as hereinbefore stated, it, the Atlantic Coast Line Railroad Company respectfully submits that the said proposed rule, regulation, order or
requirement of the Commission fixing and prescribing a
78 maximum rate of charge of two cents per mile for the transportation of passengers, as set forth in said notice, bearing date the 1st day of August, 1906, hereinabove referred to, and the rates thereby to be fixed and prescribed as affecting this respondent, should not be promulgated, or put into effect by this Honorable Commission.

Now, having fully answered, this respondent prays to be hence dismissed.

ATLANTIC COAST LINE RAILROAD COMPANY,
By ALEXANDER HAMILTON,
Its First Vice-President.

ALEXANDER HAMILTON,
General Counsel.

STATE OF VIRGINIA, *City of Petersburg, ss:*

Alexander Hamilton, being first duly sworn, deposes and says, that he is the First Vice-President of the Atlantic Coast Line Railroad Company, and that the foregoing answer is true to the best of his knowledge, information and belief.

ALEXANDER HAMILTON.

Subscribed and sworn to before me, this 31st day of October, 1906.

M. B. COGBILL,
Notary Public.

My commission expires March 1st, 1909.

79 *Temporary Restraining Order.*

Entered and Filed May 14th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,
versus
BEVERLEY T. CRUMP and Others, Defendants.

Upon reading the verified bill in this cause, and upon its being made to appear to the Court that there is danger of irreparable injury to the complainant from delay, unless the acts sought to be

enjoined are restrained until a hearing upon the motion for an injunction in this cause, it is now ordered:

1. That the defendants, Beverley T. Crump, Henry C. Stuart, and Joseph E. Willard, constituting the State Corporation Commission of Virginia, and each and all of their successors in office, their and each of their servants, agents and employees, be, and they are, hereby restrained and enjoined from publishing, or having published, in any newspaper published in the City of Richmond, the general order of the State Corporation Commission bearing date the twenty-seventh day of April, 1907, in respect to passenger rates, in the bill in this cause mentioned, and from taking any other step or steps whatsoever under the Constitution or laws of Virginia to enforce the requirements of the said order.

2. That the defendant R. T. Wilson, Clerk of the State Corporation Commission, and his successors in office, and his agents,
80 servants and employees, be, and they are, hereby restrained and enjoined from publishing or having published the said order of the State Corporation Commission in any newspaper published in the City of Richmond, Virginia.

3. That the owner, proprietor, or manager, or agent of any such owner, proprietor or manager, of any newspaper in the City of Richmond, Virginia, be, and each and every one of them is, hereby restrained and enjoined from publishing, or having published, under the direction of the State Corporation Commission, or of the Clerk thereof, such order of the State Corporation Commission.

4. That the defendants and each of them show cause before this court in the United States Court Room at Asheville, N. C., at ten o'clock a. m. on Thursday, the 27th day of June, 1907, why an injunction *pendente lite*, as prayed in the bill, should not be issued, and that a copy of this order be served as soon as practicable upon each of the defendants.

5. That this restraining order shall be in force and effect from the date hereof, and until the determination of the complainant's motion for an interlocutory injunction herein: provided, however, that upon the failure of the complainant or some one for it, to execute, within ten days from this date, a bond in a penalty of Ten Thousand Dollars, payable to the defendants, with surety approved by one of the judges of this court, and conditioned substantially as hereinafter mentioned, the said restraining order shall stand dissolved. The condition of said bond shall be substantially as follows:

"The condition of the above obligation is such that

Whereas a restraining order has been made in the above entitled cause, by the terms of which the defendants, and each of
81 them, are restrained, until an application for an interlocutory injunction herein shall be determined, from doing or causing to be done, certain acts mentioned in said restraining order; now should said restraining order be dissolved or vacated as having been wrongfully issued or because the said acts were improperly restrained, then that the above named Atlantic Coast Line Railroad Company shall pay, or cause to be paid, all damages caused by the issue of

said restraining order and the costs of this cause in connection therewith."

6. That, if for any reason the determination of the motion for an injunction *pendente lite* be not made until after July 1, 1907, the date fixed in the said order of the State Corporation Commission of Virginia for the rates thereby prescribed to go into effect, then the complainant shall, prior to that date, apply to this court, or a judge thereof, for an order directing the giving of a bond by the complainant as prayed for in the twelfth paragraph of the bill in this cause, to secure the payment into the registry of this court, in case the said order of the Commission herein complained of is in this cause finally declared valid and constitutional, of the excess which the complainant may receive on business covered by said order, over the amount it would have been entitled to receive on the basis of charges fixed by said order.

May 14th, 1907.

J. C. PRITCHARD,
United States Circuit Judge.

And thereupon came the above named complainant and filed the bond as provided in this order, which bond was this day ap-
82 proved by a judge of this court as a full compliance with the provision thereof requiring the giving of a bond.

May 15th, 1907.

J. C. PRITCHARD,
United States Circuit Judge.

Marshal's Return.

Executed May 15th 1907, by delivering in person to R. T. Wilson at the office of the State Corporation Commission of Virginia in the city of Richmond, Va., a true copy of this order, and further executed on the 16th day of May 1907, by delivering in person to Beverley T. Crump and Henry C. Stuart at the office of the State Corporation Commission of Virginia in the city of Richmond, Va., and to J. St George Bryan in person at the office of the Richmond Times-Dispatch Company in the city of Richmond, Va., the said J. St George Bryan being the Secretary and Treasurer of the said Richmond Times-Dispatch Company, the President of the said Richmond Times-Dispatch Company not being found and to Alfred B. Williams in person in the city of Richmond, Va., at the office of the News-Leader a newspaper published in the city of Richmond, Va., he being the President of the said News-Leader, and to Charles B. Cooke in person in the city of Richmond, Va., at the office of the Evening Journal a newspaper published in the city of Richmond, Va., he being the President of the said Evening Journal, to each a true copy of this order, and further executed on the 23rd day of May 1907, by delivering in person to Joseph E. Willard at the office of the State Corporation Commission of Virginia in the city of Richmond, Va., a true copy of this order.

MORGAN TREAT,
United States Marshal.

83

Bond.

Filed May 14th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,
versus
BEVERLEY T. CRUMP and Others, Defendants.

Know all men by these presents, That Atlantic Coast Line Railroad Company, a corporation of the State of Virginia, the principal legal office of which is in the City of Petersburg in said State, as principal, and the American Surety Company of New York, as surety, are held and firmly bound unto the defendants, Beverley T. Crump, H. C. Stuart, Jos. E. Willard and R. T. Wilson in the just and full sum of Ten Thousand Dollars ($10,000.00), for the payment of which well and truly to be made we do hereby jointly and severally bind ourselves, and each of our successors, firmly by these presents.

Sealed with our seals and dated this 14th day of May, in the year 1907.

The condition of this obligation is such that

Whereas a restraining order has been made in the above entitled case by the terms of which the defendants, and each of them, are restrained until an application for an interlocutory injunction herein shall be determined, from doing or causing to be done certain acts mentioned in said restraining order; now should said restraining order be dissolved or vacated as having been wrongfully
84 issued, or because the said acts were improperly restrained, then, if the above named Atlantic Coast Line Railroad Company shall pay, or cause to be paid all damages caused by the issue of said restraining order, and the costs of this cause in connection therewith, then this obligation to be null and void; otherwise to be and remain in full force and effect.

In testimony whereof the parties hereto have caused these presents to be duly signed in their respective names and their respective seals to be hereunto affixed, duly attested, this 14th day of May in the year 1907.

ATLANTIC COAST LINE RAILROAD COMPANY,
By ALEXANDER HAMILTON,
First Vice-President.

[Seal of Atlantic Coast Line Railroad Company.]

Attest:
R. D. CRONLY,
Assistant Secretary.

AMERICAN SURETY COMPANY OF NEW YORK,
By ROBT. LE MASURIER, *Agent.*

[Seal of American Surety Company *Company* of New York.]

Approved as a full compliance with the provisions of the restraining order entered in this cause on the 14th day of May, 1907, requiring the giving of a bond.

J. C. PRITCHARD,
U. S. Circuit Judge.

May 15th, 1907.

85 *Chancery Subpœna.*

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

The President of the United States of America to Beverley T. Crump, Henry C. Stuart, Joseph E. Willard, individually, and as constituting the State Corporation Commission of Virginia, and R. T. Wilson, Clerk of the State Corporation Commission of Virginia, Greeting:

We command you, and every one of you, that you appear before our judges of our Circuit Court of the United States of America, for the Eastern District of Virginia, at the Court Room in the Custom House in the City of Richmond, in said District, on the first Monday in the month of July next, to answer the Bill of Complaint of Atlantic Coast Line Railroad Company this day filed in the Clerk's Office of said Court, in said City of Richmond, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the Eastern District of Virginia to execute:

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond aforesaid; this 15th day of May, in the year of our Lord one thousand nine hundred and seven, and of our Independence the 131st.

[Seal of the United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY, *Clerk.*

86 MEMORANDUM.—The above-named defendants are notified that unless they enter their appearance in the Clerk's Office of said Court, at Richmond aforesaid, on or before the day to which the above writ is returnable, the Complaint will be taken against them as confessed, and a decree entered accordingly.

JOSEPH P. BRADY, *Clerk.*

Marshal's Return.

Executed May 15th, 1907, by delivering in person to R. T. Wilson at the office of the State Corporation Commission of Virginia in the city of Richmond, Va., a true copy of this subpœna, together with a certified copy of the Bill of Complaint filed in this cause, and further executed May 16th, 1907, by delivering in person to Beverley T. Crump and Henry C. Stuart at the office of the State Corporation

Commission of Virginia in the city of Richmond, Va., a true copy of this subpœna together with a certified copy of the Bill of Complaint filed in this cause, and further executed May 23rd, 1907, by delivering in person to Joseph E. Willard at the office of the State Corporation Commission of Virginia in the city of Richmond, Va., a true copy of this subpœna together with a certified copy of the Bill of Complaint filed in this cause.

MORGAN TREAT,
United States Marshal.

87 *Joint and Separate Answer of Defendants to Rule to Show Cause Why a Temporary Injunction be Not Awarded.*

Filed June 27th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,
v.
BEVERLEY T. CRUMP, H. C. STUART, and JOSEPH E. WILLARD, (Individually, and as Constituting the State Corporation Commission of Virginia), and R. T. WILSON, (Clerk of the State Corporation Commission), Defendants.

Joint and Separate Answer of said Defendants to a Rule to Show Cause Why a Temporary Injunction be not Awarded.

The joint and separate Answer of the above named defendants to a Rule, heretofore awarded in this cause and duly served upon
88 them, requiring them, and each of them, to show cause, before this Court, in the United States court-room at Asheville, North Carolina, at 10 o'clock A. M., on the 27th day of June, 1907, why an injunction *pendente lite*, as prayed in the Bill of the above named plaintiff, should not be issued.

These respondents (saving and reserving to themselves, jointly and separately, the right to all just and proper exceptions and defenses which they, or any of them, have, or may have, to this cause, either as to the form or as to the substance thereof, and without waiving any valid objection, or objections, which they, or any of them have, or may have, to the jurisdiction of this Honorable Court in this cause, but, on the contrary, expressly denying any such jurisdiction), for answer to said Rule, say:

First, That said city of Asheville, in the State of North Carolina, was and is beyond the territorial jurisdiction of this Honorable Court; and, therefore, as said defendants are advised and respectfully insist, this Honorable Court cannot lawfully assemble, convene, sit, receive or hear answers, motions or pleadings of the litigants in this cause, nor take any action whatever therein, at the said city of Asheville, and that this Honorable Court, and each of the Honorable Judges thereof, was and is without jurisdiction to issue said Rule,

or any Rule whatsoever, returnable before this Honorable Court at said city of Asheville; and said defendants are advised and respectfully insist that, for these reasons, said Rule was and is void and of no effect, and that these defendants ought not, nor, ought any of them, to be held or required to further answer the same.

Second. That the said defendants, Beverley T. Crump, H. C. Stuart, Joseph E. Willard, and R. T. Wilson, have not, nor hath either of them, any personal, private or individual interest in, or connection with, the subject matter of this suit; but, on the contrary, none of them ever was interested therein, or connected therewith, except in his public and official capacity and character, as
89 follows: The said Crump, Stuart and Willard, at the time of the institution of this suit, constituted the State Corporation Commission of Virginia, a Department of the Government of that State, as hereinafter more fully set forth, and the said R. T. Wilson was the Clerk of said Commission; and it is only in their respective public and official characters or capacities as Members and Clerk of said Commission that said defendants, or any of them, ever were interested in, or connected with, the subject matter of this suit—the acts, against which an injunction is prayed for in the Bill, being acts which could not possibly be performed by said defendants, or any of them, except in their said official capacities or characters, and not otherwise. The said State Corporation Commission is one of the principal Departments of the Government of the State of Virginia, and was created and established, and its functions, powers, duties and methods of procedure prescribed and provided for, by the Constitution and Statutes of said State, as will more fully appear from the One Hundred and Fifty-fifth Section, and the One Hundred and Fifty-sixth Section of the Constitution of the said State, and from the Act of the General Assembly of said State, entitled:

"An Act to put into effective operation the provisions of the Constitution relating to the creation, appointment, and organization of the State Corporation Commission, its jurisdiction, powers and duties; the qualification of its members and officers thereof, their appointment and salaries; the location of its offices and places and times of its public sessions; *its writs, processes, orders, findings and judgments; appeals from its orders, findings, and judgments and its expenses, &c.*",

which was approved April 15th, 1903; of which said constitutional provisions and statute, complete copies, duly certified by the Secretary of the Commonwealth of Virginia, under the Lesser Seal of said Commonwealth, are filed, and prayed to be taken and read
90 by this Honorable Court, along with, and as parts of, this answer, said copies being marked, respectively, "Defendants' Exhibit No. 1", and "Defendants' Exhibit No. 2". The said constitutional provisions and statute, as set forth in said copies thereof, together with two other statutes of said State, of which true copies, similarly certified, are herewith filed, marked respectively, "Defendants' Exhibit A", and "Defendants' Exhibit B", and prayed to be taken and read as parts of this answer, are (as set forth in said certificates of the Secretary of the Commonwealth attached to said copies)

still in full force and effect, and have been so continually since prior to January 1st, 1904, and these defendants aver that they represent the entire constitutional, and statutory, provisions of the State of Virginia on the subject, in effect from January 1st, 1904, to the present time. From these constitutional, and statutory, provisions it will clearly appear, as these defendants respectfully submit, that (except in certain cases of mandamus or prohibition) said State Corporation Commission has no more power, under the laws of Virginia, of suing or being sued, or of pleading or of being impleaded, in any court of law or chancery, than has the General Legislature, or Supreme Court of Appeals, of that State. In view, therefore, of the matters and things set forth and referred to in this Clause Second of their Answer to said Rule, these defendants are advised and respectfully insist, that this suit is such a suit against the State of Virginia, as this Honorable Court was, and is, without jurisdiction to entertain, or to enter any order or decree, or to take any other action therein, except to dismiss the same; and these respondents, therefore, respectfully insist that they ought not to be held or required to further answer the same.

Third. That, in the said proceedings before the State Corporation Commission of Virginia, in which said order of April 27th, 1907, was entered, the Commonwealth of Virginia was required by law to be the plaintiff, and, as a matter of fact, was the plaintiff therein, both in form and in substance; that, by the said Constitution and laws of Virginia, an appeal can be taken from said order of
91 April 27th, 1907, to the Supreme Court of Appeals of Virginia, by the Commonwealth of Virginia, as appellant, or it can be taken by the said plaintiff herein, as appellant, in which latter case, however, it is provided and required by the said Constitution and laws of Virginia, that the said Commonwealth of Virginia must be made the appellee; and these defendants are advised and respectfully insist that this proceeding now here pending, to suspend and set aside, or, at any event, to review the said order of April 27th, 1907 (in which the Commonwealth of Virginia is plaintiff, as aforesaid, from which the said Commonwealth of Virginia may take an appeal, as aforesaid, and from which the said plaintiff herein can also take an appeal, as aforesaid, but only by making the said Commonwealth of Virginia the appellee therein), is in substance and effect such a suit against the Commonwealth of Virginia as this Court is without jurisdiction to entertain; therefore, and for this reason also, these respondents are advised and respectfully insist that this Honorable Court was, and is, without jurisdiction to entertain this suit, or to enter any order or decree, or to take any other action herein, except to dismiss the same; and these respondents, therefore, respectfully insist that they ought not to be held or required to further answer the same.

Fourth. That, on the first day of June, 1907, the said Beverley T. Crump, who, up to that time, had been a Member, and the Chairman of the said State Corporation Commission of Virginia, did (pursuant to his previous resignation) retire from said Commission and cease to be the Chairman, or a Member thereof; that, thereupon, his

place as a Member of said Commission was forthwith filled by the Honorable Robert R. Prentis, who had been duly appointed, according to law, by the Honorable Claude A. Swanson, Governor of Virginia, to fill the vacancy caused by the said resignation of said defendant Crump, and who has duly qualified as a Member of said Commission according to law; that, upon so taking office as a Member of said Commission, the said the Honorable Robert R. Prentis, was,

92 by the Members of said Commission, duly elected, according to law, Chairman of said Commission, and forthwith qualified as such, since which time, to-wit, since the first day of June, 1907, the said Commission has continuously been, and still is, composed of the said the Honorable Robert R. Prentis and said defendants Stuart and Willard, as the sole Members thereof, the said Prentis being the Chairman of said Commission, as aforesaid; that said Crump, having, on June 1st, 1907, ceased, as aforesaid, to be a Member of the said Commission, has not been at any time since the 1st day of June, 1907, in any manner whatsoever, connected with said Commission, and, therefore, is no longer interested in, or in any way connected with, the subject matter of this suit; and said defendant Crump, having, by said termination of his connection with said Commission, become incapable of performing, or of, in any manner, controlling or participating in, any of the acts against which said injunction is prayed for, he is advised and respectfully insists that, in any event, this suit should be no longer maintained as to him, and that he should accordingly be hence dismissed as one of the defendants herein.

Fifth. That the said defendants have not, nor have any of them, any personal, private or individual interest in or connection with, *with* the subject matter of this suit, but are only interested therein, or connected therewith, insofar as they constitute the State Corporation Commission of Virginia and the Clerk of said Commission; that the said State Corporation Commission of Virginia was created and established, and its functions, powers, duties and procedure prescribed and provided for, by the Constitution and Statutes of said State, as will more fully appear from the One Hundred and Fifty-fifth Section, and the One Hundred and Fifty-sixth Section, of the Constitution of said State, and from the Act of the General Assembly of said State, entitled:

"An Act to put into effective operation the provisions of the Constitution relating to the creation, appointment and organization of the State Corporation Commission, its jurisdiction, powers

93 and duties; the qualification of the Members and officers thereof, and their appointment and salaries; the location of its offices and places and times of its public sessions; *its writs, processes, orders, findings and judgments; appeals from its orders, findings, and judgments, and its expenses, &c.,*"

which was approved April 15th, 1903; of which said constitutional provisions and statute, complete copies, duly certified by the Secretary of the Commonwealth of Virginia, under the Lesser Seal of said Commonwealth, are (as heretofore stated) filed, and prayed to be taken and read by this Honorable Court, along with, and as parts of,

this Answer—said copies being marked, as aforesaid, "Defendants' Exhibit No. 1" and "Defendants' Exhibit No. 2," respectively; that the said constitutional, and statutory, provisions, as set forth in said copies thereof, are, together with said other two statutes of said State, of which true copies, similarly certified, are (as heretofore stated) filed with this answer, marked, respectively, "Defendants' Exhibit A" and "Defendants' Exhibit B," and prayed to be taken and read as parts of this Answer, (as set forth in said certificates of the Secretary of the Commonwealth, attached to said copies) still in force and effect, and have been in full force and effect continuously since prior to the first day of January, 1904, and these defendants aver that they represent the entire constitutional, and statutory, provisions of the State of Virginia on the subject, in effect from the first day of January, 1904, to the present time; that, on the 6th day of October, 1903, Rules of Order, Practice and Procedure before the said State Corporation Commission of Virginia were duly made and prescribed by said Commission and entered upon the records of its proceedings and printed and distributed according to law; that a full, complete and true copy of said Rules of Order, Practice and Procedure, as they have existed since the first day of January, 1904, to the present time, and still exist, duly certified by the Chairman and Clerk of said Commission under the seal of said Commission, and further veri-
94 fied by the affidavit of said R. T. Wilson, is filed, and prayed to be taken and read by this Honorable Court, along with, and as a part of, this Answer—the said copy being marked "Defendants' Exhibit No. 3"; that the proceedings before the said State Corporation Commission which are referred to in the plaintiff's Bill, and in which the said order in respect to the passenger rates of the plaintiff was entered by the said Commission on the 27th day of April, 1907, were taken and had before the said Commission in strict conformity, in every respect, with the provisions hereinbefore mentioned of the Constitution and Statutes of the State of Virginia, and with the said Rules of Order, Practice and Procedure before the said State Corporation Commission: that the initial step in said proceedings was, as set forth in the Bill herein, a Notice, of which the following is a copy:

"*Notice.*

Office of the State Corporation Commission.

RICHMOND, VA., 31*st Day of July*, 1906.

To the Several Steam Railroad Companies Doing Business in Virginia and all Persons Interested:

Take notice that the State Corporation Commission will, in the city of Richmond, on Thursday, the first day of November, 1906, at 12 o'clock, noon, in accordance with the authority conferred by the Constitution of Virginia and the statutes enacted by the General Assembly of Virginia pursuant thereto, hear and consider any objections which may be urged against a rule, regulation, order or requirement of the Commission fixing and prescribing a maximum

rate of charge of two cents per mile for the transportation of passengers over the line of any railroad company in this State, operated by steam, between points within the State of Virginia, said maximum rate to be observed whether the transportation be entirely over the line of one railroad company, or joint transportation over the
95 lines of two or more companies; and whether the contract for transportation of a passenger or passengers be evidenced by an ordinary ticket between stations, by a mileage book or otherwise; the Commission to have, as authorized by law, the power and authority from time to time, and as often as circumstances may require, to change or revise the rate, or, by rules, regulations and requirements, to provide for the more convenient and expedient putting into effect and proper observance of said maximum rate. At the said hearing and consideration of the said maximum rate of two cents per mile, the method, time and extent of promulgation and putting into effect of the same will be heard and determined by the Commission, to the end that a maximum rate for passenger transportation may be put into effect and be made applicable to all steam railroad companies doing business in Virginia, and be properly observed by them in the transportation of passengers.

BEVERLEY T. CRUMP, *Chairman;*
H. C. STUART,
JOSEPH E. WILLARD,
Commissioners."

That said Notice was forthwith duly published according to law once a week, for four consecutive weeks, in the Times-Dispatch, a newspaper of general circulation published in the city of Richmond; that, in accordance with said Notice the said plaintiff herein appeared before the said State Corporation Commission of Virginia at the time and place fixed by said Notice, to-wit, on the first day of November, 1906, at 12 o'clock, noon, at Richmond, Virginia, and filed its Answer, a copy of which is filed with the Bill in this cause, marked "Exhibit C"; that in its said Answer, as will be more fully seen from said "Exhibit C" with the plaintiff's Bill herein, the following five grounds of defense were set up and relied upon (they being the identical grounds (with two or three immaterial exceptions)
96 upon which the plaintiff here seeks to attack and overthrow the order of the Commisison in that proceeding), to-wit:

1st. That, because of the fact that the said Corporation Commission was clothed with Legislative, Judicial and Executive powers, its dealings with the said plaintiff herein, in respect to the regulation of its rates, would not amount to *due process of law;* and that, for the same reason, said plaintiff herein, if compelled to submit to the jurisdiction of said Commission in the premises, would be denied the *equal protection of the laws;*

2nd. That, by reason of certain previous Acts of the General Assembly of Virginia, that State could not, through any instrumentality, regulate the rates of said plaintiff herein, under existing conditions, without *impairing the obligation of the State's alleged Contract with said Company;*

3rd. That *any* regulation of the intra-state passenger rates of said Company would, of necessity, amount to a regulation of the inter-state passenger rates of said Company, in violation of the *Commerce Clause* of the Constitution of the United States;

4th. That the suggested rate would, if imposed upon the Company, *be confiscatory of its property;* and

5th. That the existing rates of the Company were *fair and reasonable.*

That, thereupon, the said Commission entered into a most elaborate consideration and investigation of each of the questions of law and of fact raised by said Notice and said Answer; that, as will more fully appear by the affidavit of the said R. T. Wilson, Clerk of said Commission, herewith filed, and prayed to be
97 taken and read by this Honorable Court along with, and as a part of this Answer, marked "Defendants' Exhibit No. 4," the Commission spent many days in the hearing of the matters involved in said Notice and Answer, at which hearing the said complainant herein appeared and made an elaborate defense, introducing testimony covering several thousand pages of record; that said hearing was not concluded until the said plaintiff herein had, through its counsel, announced that its case was complete; that, after the said hearing had concluded, to-wit, on the 27th day of April, 1907, said State Corporation Commission entered its order in said proceedings fixing the maximum rates of the said plaintiff herein for the transportation of passengers in its intra-state Virginia business, which order is set out at length in the plaintiff's Bill, but, at the time of entering said order, and along with the same, and as a part of the official and legal record of said proceedings, the said Commission filed an elaborate opinion which thereby became, and was, and still is (in accordance with law), a part of the official record of said proceedings, a true copy of which opinion will be found in the copy of said official record hereinafter filed, marked "Defendants' Exhibit No. 5," and is prayed to be taken and read by this Honorable Court, along with, and as a part of this Answer; that, in accordance with the requirements of law, and of the uniformly established custom and practice in all such cases, a written record of all the proceedings (except the evidence) in said matter, from its inception up to and including said order of April 27, 1907, was duly made in the regular official "judicial order book" of the Commission by its Clerk and signed by its Chairman in exactly the same manner in which records of their proceedings are made, verified and preserved by the ordinary judicial courts of the State of Virginia; that the said "judicial order book" of the Commission and its contents are public records under the laws of Virginia just as are the order books of ordinary judicial courts of that State—said record, however, in its present shape does not now include the evidence in the cause, but all the documents and all oral testimony (of which latter
98 a complete stenographic report is preserved by the Commission) constituting such evidence *is* in the custody of the Commission, and preserved by it to be hereafter made a part of the record and as such to be duly certified by the Commission along with the other parts of the record, to the Supreme Court of Appeals of

Virginia, upon the taking of an appeal from said order of April 27, 1907, in case such appeal be taken; that a complete and true copy of the record of said proceedings, as it appears upon said judicial order book of the Commission (verified by the affidavit thereto attached of said R. T. Wilson, Clerk of said Commission) is herewith filed, marked "Defendants' Exhibit No. 5," and is prayed to be taken and read by this Honorable Court along with, and as a part of, this Answer; that, as above stated, all of the documentary evidence, and a full stenographic report of all the oral testimony adduced in said proceedings—amounting to several thousand pages—*is* preserved by the Commission in its archives ready to be made a part of the record of said proceedings and certified as such, by the Commission, according to law, along with the residue of the record of the case, to the Supreme Court of Appeals of Virginia, upon an appeal to that tribunal from the said proceedings before said Commission, including its said final order therein of April 27, 1907, which appeal, either the Commonwealth, or said plaintiff Company herein, may, as aforesaid, under the express provisions of the laws of Virginia, take as of right, but which neither has yet taken nor applied for; and said defendants say that the said State Corporation Commission of Virginia was, and is, and always has been (particularly with respect to the said order of April 27, 1907, and the said proceedings in which said order was entered), a "court" of the State of Virginia, within the true meaning, purport, intent and purview of Section 720 of the Revised Statutes of the United States, which provides, that,

"A writ of injunction shall not be granted by any court of the United States to stay proceedings in *any* court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in Bankruptcy";

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and that this suit is not a case within the exception specified in the said Section 720 just quoted. Therefore, and because of the matters and things set forth or referred to in this Fifth Clause of this Answer, these defendants are advised and respectfully insist that this Honorable Court is without any jurisdiction to entertain this suit, or to enter any decree or order, or to take any other action, herein (save to dismiss the suit), because, as these defendants insist the sole object of this suit, and the sole ground upon which the equitable interference of this court is prayed, is the obtaining of an injunction which, if obtained, would be, (as these defendants are advised and respectfully insist) in violation of the express provisions of the said statute of the United States last above mentioned; and these respondents, therefore, respectfully insist that they ought not to be held or required to further answer in this cause;

Sixth. That, under the Constitution and laws of the State of Virginia, as set forth in the Exhibits herewith filed, the State Corporation Commission of Virginia is expressly made a judicial court for the enforcement, by its own appropriate process, of compliance with the requirements of its said order of April 27th, 1907; and it is not requisite, necessary nor appropriate for the said Commission to bring suit, nor has it the power of suing, in any other tribunal, for the enforcement of any of its orders, nor is the said Commission, in

the supervision, regulation or control of Railroad Companies, authorized, to prosecute or defend litigation of any kind, in any tribunal, for any purpose. Therefore, and for this reason also, these defendants are advised and respectfully insist that the injunction prayed for in the plaintiff's Bill to restrain the said Commission and its members from taking any steps to enforce the said order of April 27th, 1907, would, if granted, have only the effect of restraining and enjoining a judicial court of the State of Virginia from en-
100 forcing by its own appropriate process, compliance with an order theretofore issued by it within the limits of its jurisdiction, and from which no appeal lies to this court, and over which this court has no power of review; these respondents, therefore, respectfully insist that this Court was, and is, without jurisdiction to entertain this suit, or to enter any order or decree, or to take any other action herein, except to dismiss the same; and these respondents, therefore, respectfully insist that they ought not to be held or required to further answer the same.

Seventh. That no persons are, or can be, impleaded in this cause with whom the plaintiff herein may legally or properly litigate the question of the reasonableness or validity of the rates imposed upon the plaintiff by said order of April 27th, 1907. These defendants have not, nor have any of them, any personal, private, or individual interest in that question, which would authorize them as individuals to litigate the same, nor are they, or any of them, by law, charged with the duty, or clothed with the power, in any official or public capacity or character, of conducting or defending any such litigation in any court whatsoever; the said State Corporation Commission, as a public body, in the exercise of its power under said constitutional provisions, is wholly without any power or authority of law to prosecute or defend suits, actions, or proceedings of any kind, or to appear as a suitor for any purpose, in any court whatsoever,—as much so as is the Supreme Court of Appeals, or the General Assembly, of Virginia; and, finally, the Commonwealth of Virginia has not consented to be impleaded in this Honorable Court for the purpose of litigating the question of the reasonableness or legality of the said rates prescribed by the said order of April 27th, 1907. Therefore, for this reason also, these defendants are advised and respectfully insist, that this Honorable Court is without jurisdiction to entertain this suit, or to enter any order or decree, or to take any further action therein, except to dismiss the same;
101 and these respondents, therefore, respectfully insist that they ought not to be held or required to further answer the same.

Eighth. That before said hearing was concluded by said Commission in said proceedings, to-wit, on March 16th, 1907, the Commission gave a written notice to each of counsel, of record in said proceedings, for the Railroad Companies which had appeared therein, including the plaintiff herein, said notice being in the form of a letter addressed by said Commission to each of said counsel by name, of the body of which letter the following is a copy:

"GENTLEMEN: We are addressing this communication to all the counsel of record in the proceedings before the Commission against

the steam railroads of the State, relative to prescribing a maximum passenger rate of two cents per mile, in order to notify all counsel as follows: This proceeding will be called on Wednesday, the 27th inst. at eleven o'clock in the morning, in the court room of the Commission, at which time the hearing will be resumed and continued until completed. Counsel for the Commonwealth will be expected to be fully prepared to submit to the Commission all evidence, oral or documentary, which they may desire to put in on behalf of the Commonwealth. The defendant railroad companies will be expected to be prepared to put in any further evidence, or bring before the Commission any further fact which they may desire the Commission to consider in this proceeding. At the close of the evidence on both sides, the Commission will be prepared to hear argument on the issues arising in this proceeding, to the end that, at the sitting of the Commission, commencing on the 27th day of March, this proceeding will be carried on consecutively from day to day until concluded and submitted to the Commission for its consideration and action."

102 That accordingly, on March 27th, 1907, the Commission again assembled in public session for the final hearing of said proceedings, and after the Chairman of the Commission had read aloud at said session of the Commission, the above notice, the further taking of evidence in said proceeding was resumed, and the hearing by the Commission was not concluded until the counsel for the said plaintiff herein had announced that his client had nothing more to say or offer in its behalf; and these defendants are advised and respectfully insist, that whether the said State Corporation Commission of Virginia be regarded as a judicial, a legislative or an administrative tribunal, or as a combination of any two or more of such bodies, yet the said proceedings, which resulted in the said order of April 27th, 1907, and which are the regular proceedings prescribed by the Constitution and laws of the State of Virginia and the regularly established practice of the said Corporation Commission in all such cases, constituted due process of law as to the said plaintiff herein, within the true intent and meaning of the Fourteenth Amendment of the Constitution of the United States; and these respondents are further advised and respectfully insist that the said plaintiff herein, having been duly made a party to said proceedings, and having appeared and made therein a full defence and submitted the matter to the Commission for its decision and action (as, these defendants aver, the said plaintiff herein did do), and the said Commission, having, thereupon, decided the questions involved in said proceedings and so submitted to it for decision, and having taken action upon the matter as set forth in its said order of April 27th, 1907, the said plaintiff herein thereupon became, was, and is, bound by that decision and action of the Commission and cannot now ignore nor disregard the same, but must appeal from it in the manner provided by law, or else abide by, and obey, it; and these defendants are further advised and respectfully insist, that this Honorable Court, being without jurisdiction to entertain an appeal from said order of April 27th, 1907, is equally without jurisdiction to ignore,

103 disregard, reverse, or overrule the same, and that to enjoin the enforcement of that order by the tribunal which entered

it and which, by the laws of Virginia, is alone charged with the enforcement of that order, is tantamount to, and in substance, and effect, the same as, to ignore, disregard and overrule that order; and these defendants aver that every question of law or fact involved in this suit (except only the question of the jurisdiction of this Court) was directly involved in the said proceedings before said Commission, which culminated in said order of April 27th, 1907, and that (with two or three immaterial exceptions) every such question was expressly raised and pressed in the said proceedings by said plaintiff herein, and was considered and decided, expressly or by necessary implication, by the said Commission in the said proceedings; and these defendants aver that there was no evidence, or defence, or right, or matter, of any kind (whether legal or equitable, whether depending upon questions of law or of fact, or both, and whether arising under the Constitution and laws of the United States or otherwise), which the plaintiff herein could assert or rely upon in its behalf in this suit (if it should be proceeded with as prayed for in the plaintiff's Bill), that the said plaintiff herein did not have both the express and plain legal right to introduce and rely upon, and the fullest and fairest opportunity of introducing and relying upon, in its behalf, throughout said proceedings before said Commission which culminated in said order of April 27th, 1907, of which opportunity the said plaintiff herein most freely availed itself, without limitation or hindrance; and these defendants say, that if this suit could legally proceed, its future proceedings would and could be nothing else than a repetition of exactly the same hearing already had, upon the same evidence already adduced, and upon the same questions already decided, in said proceedings before said Commission culminating in said order of April 27th, 1907; and these defendants further aver, that the Constitution and laws of the State of Virginia make full, ample and liberal provision for an appeal of right by the said plaintiff herein, to the Supreme Court of Ap-
104 peals of Virginia, from the said decision and action of the said State Corporation Commission, and for the suspending of the operation of said order of April 27th, 1907, pending the decision of such an appeal; yet these defendants say, that the said plaintiff herein has not taken, nor applied for, any such appeal, although there is nothing whatever to prevent, hinder, delay, or obstruct its applying for and obtaining such an appeal and in addition thereto, a supersedeas (for which, ample and liberal provision is also made by law) suspending the operation of such order pending the decision of such appeal; and these defendants are advised that, if, upon the decision of any such appeal, the said Railway Company considers that any of the rights secured to it under the Constitution and laws of the United States have been ignored or violated, or that any question, arising under the Constitution and laws of the United States and involved in said proceedings or appeal, has been erroneously decided to its detriment, by the said Supreme Court of Appeals of Virginia upon such appeal, then, and in that event, the Constitution and laws of the United States provide a plain, simple, adequate, perfect and complete remedy for the said plaintiff herein, in the form of an

appeal to the Supreme Court of the United States from any such adverse decision by the said Supreme Court of Appeals of Virginia upon such appeal from the said Corporation Commission; therefore, and for these reasons also, these respondents are further advised and respectfully insist that this Honorable Court is without jurisdiction to entertain this suit, or to enter any order or decree, or to take other action herein, except to dismiss the same; and these respondents, therefore, respectfully insist that they ought not to be held or required to further answer the same.

Ninth. That the said proceedings before the State Corporation Commission of Virginia, in which said order of April 27th, 1907, was entered, are not yet completed, but are still pending before that body; and these defendants are advised and respectfully insist that if said Commission be considered and treated as a court, within
105 the purview of said Section 720 of the Revised Statutes of the United States, then, and in that event, this Court is, as hereinbefore pointed out, without jurisdiction to entertain this suit, or to grant said injunction prayed for in the Bill of the plaintiff herein; and that if, on the other hand, the said Commission be regarded and treated as a legislative body, then, and in that event, this Court is equally without jurisdiction to enjoin the proceeding of such a body in the course of the enactment of a rate regulation, until such enactment is completed; and these defendants aver that, under the Constitution and laws of Virginia, the rate regulation set forth in said order of April 27th, 1907, is not a completed enactment and will not be, unless and until the publication thereof, as directed by said order, is completed, such publication being a part and parcel of the proceedings necessary for the complete enactment of the said rate regulation; therefore, and for these reasons also these defendants are advised and respectfully insist, that this Honorable Court was, and is, without jurisdiction to entertain this suit or to enter any order or decree, or to take any other action herein, except to dismiss the same; and these respondents, therefore, respectfully insist that th-y ought not to be held or required to further answer the same.

Tenth. That the said proceedings before the State Corporation Commission, which culminated in, and included, said order of April 27th, 1907, were and are exactly the same, both as to the tribunal, and as to the methods and forms involved, as are applicable, under the laws of that State, to all cases of a similar character, and were not different in any respect in the case of the plaintiff herein, than they were, are, and would be, under the laws of Virginia, in the case of any and every other railroad company in the State of Virginia whose rates are sought or attempted to be regulated by law; wherefore, these defendants are advised and respectfully insist that neither in the said proceedings, nor in any of them, was the said plaintiff herein denied the equal protection of the laws.

106 *Eleventh.* That, under the Constitution and laws of Virginia, as set forth in the Exhibits filed with this Answer, the plaintiff herein has a plain, complete, prompt and adequate remedy at law for the matters of which it complains in this Bill, in this, that under the said Constitution and laws, the plaintiff herein is given an

appeal as of right from the said order of April 27th, 1907, to the Supreme Court of Appeals of Virginia, and is also given the right to have the operation of said order appealed from suspended, pending the decision of said appeal; and, under the Constitution and laws of the United States, the said plaintiff herein is given the further right of an appeal to the Supreme Court of the United States from any adverse decision of the said Supreme Court of Appeals of Virginia in such matters, upon any question arising under the Constitution and laws of the United States. Therefore, and for this reason also, these defendants are advised and respectfully insist, that this Honorable Court was, and is, without jurisdiction to entertain this suit or to enter any order or decree, or to take any action herein, except to dismiss the same; and these respondents, therefore, respectfully insist that they ought not to be held or required to further answer the same.

Twelfth. That, as will be clearly seen from the constitutional and statutory provisions on the subject hereinbefore set forth and referred to, the State Corporation Commission of Virginia is radically and essentially different, in its character and constitution from the Railroad Commissions (under whatsoever name designated) of any other State in the Union, and from the Interstate Commerce Commission, and therefore the rules and principles of law applicable to injunctions granted by Federal Courts against regulations promulgated by the Railroad Commissions of other States, or to proceedings therein upon regulations prescribed by the Interstate Commerce Commission, can have no proper application to this case. The principal characteristic peculiar to the State Corporation Commission of Virginia is this, that it is, by the Constitution of that State, clothed
107 with all the powers, and endowed with the full nature, of an ordinary judicial court, although it has other powers and functions in addition thereto; it sits in a fixed and public place; it keeps a written public record of its proceedings, which has all the characteristics of a court record; it issues its own writs and processes, and has them served and executed by its own executive process and not otherwise; it can compel the attendance and testifying of witnesses and the production of documents; it can enter no order nor make any valid regulation against a party without first citing it to appear and otherwise proceeding against it by due process of law; it is expressly given all the powers of a court of record; it can impose fines and render, and enforce by execution, judgments therefor which are recordable, and become liens like judgments of other courts; it can issue and enforce writs of mandamus and injunction; it can punish for contempt; it can enforce its own judgments and orders by its own executive process; and not otherwise and none of its judgments or orders can be collaterally attacked in any court of said State; from all of its judgments and orders appeals lie to the Supreme Court of Appeals of the State; but to that Court only; writs of mandamus and prohibition may be issued to it by the Supreme Court of Appeals—in short, there is not an essential characteristic of an ordinary judicial court which the State Corporation Commission of Virginia does not possess. Exactly the same due process of law which would be observed, and the same procedure which would be pursued, in an ordinary judicial court of other States, or of the

United States, in a suit by an ordinary Railroad Commission, or by the Interstate Commerce Commission, against a railroad company to compel the observance of an *actually promulgated* rate regulation, just *such* process is observed, and just *such* procedure pursued, by the Virginia State Corporation Commission, *in limine*, with reference to a *suggested* rate regulation, in order that its fairness and reasonableness may be judicially tested, while its wisdom and propriety is being legislatively considered, *before* its promulgation and before any injury can be done or penalty incurred, rather
108 than *afterwards*. In such a proceeding, the company has exactly the same rights and protection, and may assert and rely upon exactly the same matters of law and of fact, and upon each and every of them, that it could have asserted or relied upon before an ordinary court in a proceeding taken *after* the promulgation of the rate; and from the decision by the Commission of every *judicial* question involved in such proceeding, an appeal of right may be taken (with supersedeas, if desired) by the company affected, to the Supreme Court of Appeals of the State, and thence, upon any Federal question, to the Supreme Court of the United States. Thus it will be seen that, under the Virginia law, all questions involving the legality of a given rate regulation, are to be tried and judicially determined *before* the rate goes into effect, rather than *afterwards*, and are triable, in the first instance, by a tribunal especially suited for considering and adjudging the reasonableness of rates, the members of which tribunal are experts in such matters, rather than by an ordinary judicial tribunal, whose machinery was not designed for such work, and whose judges and masters in chancery rarely, if ever, have occasion to consider such matters. After this *nisi prius* trial, the proceedings in Virginia are the same as elsewhere, that is to say, that the opportunity for appeal from the decision of such *nisi prius* court, upon any judicial question, to the Supreme Court of the State, and thence, upon any Federal question, to the United States Supreme Court, is, in Virginia, the same as, or rather more liberal than, elsewhere. The *nisi prius* proceedings in Virginia are none the less judicial proceedings because they are conducted before a tribunal especially constituted, and peculiarly fitted, for considering and disposing of such matters—its proceedings partaking, in every particular, of all the essential elements of due process of law.

For all of the foregoing reasons, these defendants are advised and again respectfully insist, that this Honorable Court is without jurisdiction to entertain this suit, or to enter any judgment or order, or to take any other proceedings herein except to dismiss the same;
109 wherefore, these defendants respectfully pray that this suit be dismissed, and that they be allowed to go hence without day, and to recover their costs against the plaintiff herein.

BEVERLEY T. CRUMP,
H. C. STUART,
JOS. E. WILLARD,
By Counsel.
R. T. WILSON.

WILLIAM A. ANDERSON,
A. CAPERTON BRAXTON,
p. d.

110 STATE OF VIRGINIA,
City of Richmond. To-wit:

This day Beverley T. Crump, to me personally known, appeared in person before me, the undersigned, a Notary Public in and for the City aforesaid, in the State of Virginia, and, before me, in my said City, subscribed his name to the foregoing answer, and made oath, then and there, that all of the statements of fact contained in said answer are true, of his own knowledge, except as to those matters therein stated on information and belief, and, as to these matters, he believes them to be true.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, this, the 20th day of June, 1907.

[NOTARIAL SEAL.] JNO. S. EGGLESTON,
Notary Public.

111 DEFENDANT'S EXHIBIT A.

(Section 19 of Chapter II, of An Act Concerning Public Service Corporations, Approved January 18th, 1904.)

19. Any person or corporation aggrieved by anything done or omitted in violation of any of the provisions of this act, by any public service corporation chartered or doing business in this State, shall have the right to make complaint of the grievance and seek relief by petition against such public service corporation before the State Corporation Commission, sitting as a court of record. If the grievance complained of be established, the State Corporation Commission, sitting as a court of record, shall have jurisdiction, by injunction, to restrain such public service corporation from continuing the same and to enjoin obedience to the requirements of this act, and the said commission, sitting as a court of record, shall also have jurisdiction, by mandamus, to compel any public service corporation to observe and perform any public duty imposed upon public service corporations by the laws of this Commonwealth, subject as to any matter arising under this section to the right of appeal to the Supreme Court of Appeals by either party as of right in the mode prescribed by law, but nothing in this section shall be construed to confer any power upon the State Corporation Commission which is forbidden to the courts by section twelve of Chapter four of this act.

COMMONWEALTH OF VIRGINIA:

I, D. Q. Eggleston, Secretary of the Commonwealth of Virginia, and Keeper of the Seals thereof, do hereby certify that the foregoing is a true copy of section nineteen of Chapter II. of an act of the General Assembly of Virginia, entitled "An act concerning Public Service Corporations," approved January 18th, 1904, as the same is published according to law; that said section of said act is still in full force and effect, and has been so continuously since the last-mentioned date

112 Given under my hand and the Lesser Seal of the Commonwealth, at Richmond, this 25th day of June, in the year of our Lord, nineteen hundred and seven.

[Lesser Seal of the Commonwealth.]

D. Q. EGGLESTON,
Secretary of the Commonwealth and Keeper of the Seals.

113 DEFENDANT'S EXHIBIT B.

AN ACT

To require the State Corporation Commission to fix and prescribe storage, demurrage and car service charges which may be collected by railroad and other transportation companies on freight transported, or to be transported by them, and to be paid by them on freight delayed and cars not promptly furnished or placed by them, with rules and regulations governing same.

Approved May 16, 1903.

1. Be it enacted by the general assembly of Virginia, That from and after the passage of this act power is hereby conferred on the State Corporation Commission of the State of Virginia, and it is required to fix and prescribe a schedule of rates for storage of freight in depots and for demurrage or car service on freight in carload lots, to be charged by railroad and other transportation companies doing business in this State, and to fix the time after the reception of freight at destination at which such charges of storage, demurrage, or car service shall begin, with power to vary the same according to the value and character of the freight stored, the nature of the place of destination, the residence of the consignee, and such other facts as, in its judgment, should be considered in fixing the same.

2. That the State Corporation Commission shall fix and prescribe a schedule of detention charges to be paid by railroad and other transportation companies to the consignee in case of delay in the delivery of freight in carloads or less at destination, or where shipments are held an unreasonable length of time at the station or siding at which they originate, or at any intermediate point, and for carrying freights, express packages, and all other effects by and beyond the place of final destination, without authority from the consignee; and the commission shall also fix and prescribe rules and regula-

114 tions covering the placing of empty cars and a schedule of detention charges to be paid by railroad companies to consignors when cars are not placed for loading in accordance with said rules and regulations after application has been made therefor, when said charges shall, when paid, be in full of any and all claims for damages growing out of such failure: provided, however, that the owner of the freight may, at his election, waive said charges and elect to claim such actual damage as he may have sustained instead of such charges.

3. This act shall be in force from its passage.

COMMONWEALTH OF VIRGINIA:

I, D. Q. Eggleston, Secretary of the Commonwealth of Virginia, and Keeper of the Seals thereof, do hereby certify that the foregoing is a true copy of an act of the General Assembly of Virginia, bearing the title set forth in the caption to the foregoing copy,—approved May 16, 1903,—as the same is published according to law; that said act is still in full force and effect, and has been so continuously since the last-mentioned date.

Given under my hand and the Lesser Seal of the Commonwealth, at Richmond, this 25th day of June, in the year of our Lord, nineteen hundred and seven.

[Lesser Seal of the Commonwealth.]

D. Q. EGGLESTON,
Secretary of the Commonwealth and Keeper of the Seals.

115 DEFENDANTS' EXHIBIT NO. 1.

(Sections 155 and 156, Virginia Constitution.)

SEC. 155. A permanent commission, to consist of three members, is hereby created, which shall be known as the State Corporation Commission. The commissioners shall be appointed by the Governor, subject to confirmation by the General Assembly in joint session, and their regular terms of office shall be six years, respectively, except those first appointed under this Constitution, of whom, one shall be appointed to hold office until the first day of February, nineteen hundred and four, one, until the first day of February, nineteen hundred and six, and one, until the first day of February, nineteen hundred and eight. Whenever a vacancy in the commission shall occur, the Governor shall forthwith appoint a qualified person to fill the same for the unexpired term, subject to confirmation by the General Assembly as aforesaid. Commissioners appointed for regular terms shall, at the beginning of the terms for which appointed, and those appointed to fill vacancies shall, immediately upon their appointments, enter upon the duties of their office; but no person so appointed, either for a regular term, or to fill a vacancy, shall enter upon, or continue in, office after the General Assembly shall have refused to confirm his appointment, or adjourned *sine die* without confirming the same, nor shall he be eligible for re-appointment to fill the vacancy caused by such refusal or failure to confirm. No person while employed by, or holding any office in relation to, any transportation or transmission company, or while in any wise financially interested therein, or while engaged in practicing law, shall hold office as a member of said commission, or perform any of the duties thereof. At least one of the commissioners shall have the qualifications prescribed for judges of the Supreme Court of Appeals; and any commissioner may be impeached or removed in the manner provided for the impeachment or removal of a judge of said court.

116 The commission shall annually elect one of their members chairman of the same, and shall have one clerk, one bailiff and such other clerks, officers, assistants and subordinates as

may be provided by law, all of whom shall be appointed, and subject to removal, by the commission. It shall prescribe its own rules of order and procedure, except so far as the same are specified in this Constitution or any amendment thereof. The General Assembly may establish within the department, and subject to the supervision and control, of the commission, subordinate divisions, or bureaus, of insurance, banking or other special branches of the business of that department. All sessions of the commission shall be public, and a permanent record shall be kept of all its judgments, rules, orders, findings and decisions, and of all reports made to, or by, it. Two of the commissioners shall constitute a quorum for the transaction of business, whether there be a vacancy in the commission or not. The commission shall keep its office open for business on every day except Sundays and legal holidays. Transportation companies shall at all times transport, free of charge, within this State, the members of said commission and its officers, or any of them, when engaged on their official duties. The General Assembly shall provide suitable quarters for the commission and funds for its lawful expenses, including pay for witnesses summoned, and costs of executing processes issued, by the commission of its own motion; and shall fix the salaries of the members, clerks, assistants and subordinates of the commission and provide for the payment thereof; but the salary of each commissioner shall not be less than four thousand dollars per annum. After the first day of January, nineteen hundred and eight, the General Assembly may provide for the election of the members of the commission by the qualified voters of the State; in which event, vacancies thereafter occurring shall be filled as hereinbefore provided, until the expiration of twenty days after the next general election, held not less than sixty days after the vacancy occurs, at which election the vacancy shall be filled for the residue of the unexpired term.

SEC. 156. (*a*) Subject to the provisions of this Constitution and to such requirements, rules and regulations as may be pre-
117 scribed by law, the State Corporation Commission shall be the department of government through which shall be issued all charters and amendments or extensions thereof, for domestic corporations, and all licenses to do business in this State to foreign corporations; and through which shall be carried out all the provisions of this Constitution, and of the laws made in pursuance thereof, for the creation, visitation, supervision, regulation and control of corporations chartered by, or doing business in, this State. The commission shall prescribe the forms of all reports which may be required of such corporations by this Constitution or by law; it shall collect, receive, and preserve such reports, and annually tabulate and publish them in statistical form; it shall have all the rights and powers of, and perform all the duties devolving upon, the Railroad Commissioner and the Board of Public Works, at the time this Constitution goes into effect, except so far as they are inconsistent with this Constitution, or may be hereafter abolished or changed by law.

(*b*) The commission shall have the power, and be charged with the duty, of supervising, regulating and controlling all transportation and transmission companies doing business in this State, in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses therein by such compan-

ies: and to that end the commission shall, from time to time, prescribe, and enforce against such companies, in the manner hereinafter authorized, such rates, charges, classifications of traffic, and rules and regulations, and shall require them to establish and maintain all such public service, facilities and conveniences, as may be reasonable and just, which said rates, charges, classifications, rules, regulations and requirements, the commission may, from time to time, alter or amend. All rates, charges, classifications, rules and regulations adopted, or acted upon, by any such company, inconsistent with those prescribed by the commission, within the scope of its authority, shall be unlawful and void. The commission shall also have the right at all times to inspect the books and papers of all transportation and transmission companies doing business in
118 this State, and to require from such companies, from time to time, special reports and statements under oath, concerning their business; it shall keep itself fully informed of the physical condition of all the railroads of the State, as to the manner in which they are operated, with reference to the security and accommodation of the public, and shall, from time to time, make and enforce such requirements, rules and regulations as may be necessary to prevent unjust or unreasonable discriminations by any transportation or transmission company in favor of, or against, any person, locality, community, connecting line, or kind or traffic, in the matter of car service, train or boat schedule, efficiency of transportation or otherwise, in connection with the public duties of such company. Before the commission shall prescribe or fix any rate, charge, or classification of traffic, and before it shall make any order, rule, regulation or requirement directed against any one or more companies by name, the company or companies to be affected by such rate, charge, classification, order, rule, regulation or requirement, shall first be given, by the commission, at least ten days' notice of the time and place, when and where the contemplated action in the premises will be considered and disposed of, and shall be afforded a reasonable opportunity to introduce evidence and to be heard thereon, to the end that justice may be done, and shall have process to enforce the attendance of witnesses; and before the commission shall make or prescribe any general order, rule, regulation or requirement, not directed against any specific company or companies by name, the contemplated general order, rule, regulation or requirement shall first be published in substance, not less than once a week for four consecutive weeks in one or more of the newspapers of general circulation published in the city of Richmond, Virginia, together with notice of the time and place when and where the commission will hear any objections which may be urged by any person interested, against the proposed order, rule, regulation or requirement; and every such general order, rule, regulation or requirement, made by the commission shall be published at length, for the time and
119 in the manner above specified, before it shall go into effect, and shall also, as long as it remains in force, be published in each subsequent annual report of the commission. The authority of the commission (subject to review on appeal as hereinafter provided) to prescribe rates, charges and classifications of traffic, for transpor-

tation and transmission companies, shall be paramount; but its authority to prescribe any other rules, regulations or requirements for corporations or other persons shall be subject to the superior authority of the General Assembly to legislate thereon by general laws: provided, however, that nothing in this section shall impair the right which has heretofore been, or may hereafter be, conferred by law upon the authorities of any city, town or county to prescribe rules, regulations or rates of charge to be observed by any public service corporation in connection with any services performed by it under a municipal or county franchise granted by such city, town or county, so far as such services may be wholly within the limits of the city, town or county granting the franchise. Upon the request of the parties interested, it shall be the duty of the commission, as far as possible, to effect, by mediation, the adjustment of claims, and the settlement of controversies, between transportation or transmission companies and their patrons.

(*c*) In all matters pertaining to the public visitation, regulation of control of corporations, and within the jurisdiction of the commission, it shall have the powers and authority of a court of record, to administer oaths, to compel the attendance of witnesses and the production of papers, to punish for contempt any person guilty of disrespectful or disorderly conduct in the presence of the commission while in session, and to enforce compliance with any of its lawful orders or requirements by adjudging, and enforcing by its own appropriate process, against the delinquent or offending company (after it shall have been first duly cited, proceeded against by due process of law before the commission sitting as a court, and afforded opportunity to introduce evidence and to be heard, as well against the validity, justness or reasonableness of the order or requirement alleged to have been violated, as against the liability of the company for the alleged violation), such fines or other penalties as may be prescribed or authorized by this Constitution or by law. The commission may be vested with such additional powers, and charged with such other duties (not inconsistent with this Constitution) as may be prescribed by law, in connection with the visitation, regulation or control of corporations, or with the prescribing and enforcing of rates and charges to be observed in the conduct of any business where the State has the right to prescribe the rates and charges in connection therewith, or with the assessment of the property of corporations, or the appraisement of their franchises, for taxation, or with the investigation of the subject of taxation generally. Any corporation failing or refusing to obey any valid order or requirement of the commission, within such reasonable time, not less than ten days, as shall be fixed in the order, may be fined by the commission (proceeding by due process of law as aforesaid) such sum, not exceeding five hundred dollars, as the commission may deem proper, or such sum, in excess of five hundred dollars, as may be prescribed, or authorized, by law; and each day's continuance of such failure or refusal, after due service upon such corporation of the order or requirement of the commission, shall be a separate offence: provided, that should the operation of such order or requirement be suspended pending an appeal therefrom, the period of such suspen-

sion shall not be computed against the company in the matter of its liabilities to fines or penalties.

(*d*) From any action of the commission prescribing rates, charges of classifications of traffic, or affecting the train schedule of any transportation company, or requiring additional facilities, conveniences or public service of any transportation or transmission company, or refusing to approve a suspending bond, or requiring additional security thereon or an increase thereof, as provided for in subsection (*c*) of this section, an appeal (subject to such reasonable limitations as to time, regulations as to procedure and provisions as to costs, as may be prescribed by law) may be taken by the corporation whose rates, charges or classifications of traffic, sched-
121 ule, facilities, conveniences or service, are affected, or by any person deeming himself aggrieved by such action or (if allowed by law) by the Commonwealth. Until otherwise provided by law, such appeal shall be taken in the manner in which appeals may be taken to the Supreme Court of Appeals from the inferior courts, except that such an appeal shall be of right, and the Supreme Court of Appeals may provide by rule for proceedings in the matter of appeals in any particular in which the existing rules of law are inapplicable. If such appeal be taken by the corporation whose rates, charges or classifications of traffic, schedules, facilities, conveniences or service are affected, the Commonwealth shall be made the appellee; but, in the other cases mentioned, the corporation so affected shall be made the appellee. The General Assembly may also, by general laws, provide for appeals from any other action of the commission, by the Commonwealth or by any person interested, irrespective of the amount involved. All appeals from the commission shall be to the Supreme Court of Appeals only; and in all appeals to which the Commonwealth is a party, it shall be represented by the Attorney-General or his legally appointed representative. No court of this Commonwealth (except the Supreme Court of Appeals, by way of appeals as herein authorized), shall have jurisdiction to review, reverse, correct or annul any action of the commission, within the scope of its authority, or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the commission in the performance of its official duties; provided, however, that the writs of *mandamus* and prohibition shall lie from the Supreme Court of Appeals to the commission in all cases where such writs, respectively, would lie to any inferior tribunal or officer.

(*e*) Upon the granting of an appeal, a writ of *supersedeas* may be awarded by the appellate court, suspending the operation of the action appealed from until the final disposition of the appeal: but, prior to the final reversal thereof by the appellate court, no action of the commission prescribing or affecting rates, charges or classifications of traffic of any transportation or transmission com-
122 pany shall be delayed, or suspended, in its operation, by reason of any appeal by such corporation, or by reason of any proceedings resulting from such appeal, until a suspending bond shall first have been executed and filed with, and approved by, the

commission (or approved on review by the Supreme Court of Appeals), payable to the Commonwealth, and sufficient in amount and security to insure the prompt refunding, by the appealing corporation to the parties entitled thereto, of all charges which such company may collect or receive, pending the appeal, in excess of those fixed, or authorized, by the final decision of the court on appeal. The commission, upon the execution of such bond, shall forthwith require the appealing company, under penalty of the immediate enforcement (pending the appeal and notwithstanding any *supersedeas*), of the order or requirement appealed from, to keep such accounts, and to make to the commission, from time to time, such reports, verified by oath, as may, in the judgment of the commission, suffice to show the amounts being charged or received by the company, pending the appeal, in excess of the charge allowed by the action of the commission appealed from, together with the names and addresses of the persons to whom such overcharges will be refundable in case the charges made by the company pending the appeal be not sustained on such appeal; and the commission shall also, from time to time, require such company, under like penalty, to give additional security on, or to increase, the said suspending bond, whenever in the opinion of the commission, the same may be necessary to insure the prompt refunding of the overcharges aforesaid. Upon the final decision of such appeal, all amounts which the appealing company may have collected, pending the appeal, in excess of that authorized by such final decision, shall be promptly refunded by the company to the parties entitled thereto, in such manner, and through such methods of distribution, as may be prescribed by the commission, or by law. All such appeals affecting rates, charges or classifications of traffic, shall have precedence upon the docket of the appellate court, and shall be heard and disposed of promptly by the court, irrespective of its place of session,
123 next after the *habeas corpus*, and Commonwealth's, cases already on the docket of the court.

(*f*) In no case of appeal from the commission shall any new or additional evidence be introduced in the appellate court; but the chairman of the commission, under the seal of the commission, shall certify to the appellate court all the facts upon which the action appealed from was based and which may be essential for the proper decision of the appeal, together with such of the evidence introduced before, or considered by, the commission as may be selected, specified and required to be certified, by any party in interest, as well as such other evidence, so introduced or considered, as the commission may deem proper to certify. The commission shall, whenever an appeal is taken therefrom, file with the record of the case, and as a part thereof, a written statement of the reasons upon which the action appealed from was based, and such statement shall be read and considered by the appellate court, upon disposing of the appeal. The appellate court shall have jurisdiction, on such appeal, to consider and determine the reasonableness and justness of the action of the commission appealed from as well as any other matter arising under such appeal: provided, however, that the action of

the commission appealed from shall be regarded as *prima facie* just, reasonable and correct; but the court may, when it deems necessary, in the interest of justice, remand to the commission any case pending on appeal, and require the same to be further investigated by the commission, and reported upon to the court (together with a certificate of such additional evidence as may be tendered before the commission by any party in interest), before the appeal is finally decided.

(*g*) Whenever the court, upon appeal, shall reverse an order of the commission affecting the rates, charges or the classification of traffic of any transportation or transmission company, it shall, at the same time, substitute therefor such order as, in its opinion, the commission should have made at the time of entering the order appealed from; otherwise, the reversal order shall not be valid.
124 Such substituted order shall have the same force and effect (and none other) as if it had been entered by the commission at the time the original order appealed from was entered. The right of the commission to prescribe and enforce rates, charges, classifications, rules and regulations, affecting any or all actions of the commission theretofore entered by it and appealed from, but based upon circumstances or conditions different from those existing at the time the order appealed from was made, shall not be suspended or impaired by reason of the pendency of such appeal; but no order of the commission, prescribing or altering such rates, charges, classifications, rules or regulations, shall be retroactive.

(*h*) The right of any person to institute and prosecute in the ordinary courts of justice, any action, suit or motion against any transportation or transmission company, for a- claim or cause of action against such company, shall not be extinguished or impaired, by reason of any fine or other penalty which the commission may impose, or be authorized to impose, upon such company because of its breach of any public duty, or because of its failure to comply with any order or requirement of the commission; but, in no such proceeding by any person against such corporation, nor in any collateral proceeding, shall the reasonableness, justness or validity of any rate, charge, classification of traffic, rule, regulation or requirement, theretofore prescribed by the commission, within the scope of its authority, and then in force, be questioned: provided, however, that no case based upon or involving any order of the commission shall be heard, or disposed of, against the objection of either party, so long as such order is suspended in its operation by an order of the Supreme Court of Appeals as authorized by this Constitution or by any law passed in pursuance thereof.

(*i*) The commission shall make annual reports to the Governor of its proceedings, in which reports it shall recommend, from time to time, such new or additional legislation in reference to its powers or duties, or to the creation, supervision, regulation or control
125 of corporations, or to the subject of taxation, as it may deem wise or expedient, or as may be required by law.

(*k*) Upon the organization of the State Corporation Commission, the Board of Public Works and the office of Railroad Commissioner,

shall cease to exist; and all books, papers and documents pertaining thereto, shall be transferred to, and become a part of the records of, the office of the State Corporation Commission.

(*l*) After the first day of January, nineteen hundred and five, in addition to the modes of amendment provided for in Article Fifteen of this Constitution, the General Assembly, upon the recommendation of the State Corporation Commission, may, by law, from time to time, amend subsections *a* to *i*, inclusive, of this section, or any of them, or any such amendment thereof: provided, that no amendment made under authority of this sub-section shall contravene the provisions of any part of this Constitution other than the sub-sections last above referred to or any such amendment thereof.

COMMONWEALTH OF VIRGINIA:

I, D. Q. Eggleston, Secretary of the Commonwealth of Virginia and Keeper of the Seals thereof, do hereby certify that the foregoing is a true copy of sections one hundred and fifty-five and one hundred and fifty-six of the Constitution of Virginia, the original of which, by law, is in my custody; that said two sections are still in full force and effect, and have been so continuously since prior to January 1st, 1904.

Given under my hand and the Lesser Seal of the Commonwealth, at Richmond, this 25th day of June, in the year of our Lord, nineteen hundred and seven.

[Lesser Seal of the Commonwealth.]

D. Q. EGGLESTON,
Secretary of the Commonwealth and Keeper of the Seals.

126 DEFENDANTS' EXHIBIT NO. 2.

AN ACT

To put into effective operation the provisions of the constitution relating to the creation, appointment and organization of the "State Corporation Commission," its jurisdiction, powers, functions, and duties; the qualifications of the members and officers thereof, their appointment and salaries; the location of its offices, and places and times of its public sessions; its writs, processes, orders, findings and judgments; appeals from its orders, findings and judgments, and its expenses, etc.

Approved April 15, 1903.

Be it enacted by the General Assembly of Virginia as follows:

1. That as used in this act the term "corporation" or "company" shall include all corporations chartered by the acts of the General Assembly of Virginia, or under the general incorporation laws of this State, or doing business therein, and all trusts, associations, and joint-stock companies, having any powers or privileges not possessed

by individuals or unlimited partnerships, and shall exclude all municipal corporations and public institutions owned or controlled by the State; the term "charter" shall be construed to mean a charter of incorporation by or under which any such corporation is formed; the term "transportation company" shall include any company, trustee, or other person owning, leasing, or operating for hire, a railroad, street railway, canal, steamboat, or steamship lines, also any freight-car company, car association or car trust, express company, or company, trustee, or person in any way engaged in business as a common carrier over a route acquired, in whole or in part, under the right of eminent domain; the term "transmission company" shall include any company owning, leasing, or operating for hire,
any telegraph or telephone line; the term "public service cor-
127 poration" shall include all transportation and transmission companies, all gas, electric light, heat, and power companies, and all persons authorized to exercise the right of eminent domain, or to use or occupy any street, alley, or public highway, whether along, over, or under the same, in a manner not permitted to the general public; the term "person" as used in this act shall include individuals, partnerships, and corporations, in the singular as well as in the plural number; the term "the commission" shall be construed to mean the "State Corporation Commission," and the word "officers," when used in connection with said commission, shall be construed to mean any clerk, bailiff, assistant, or other appointee of the State Corporation Commission.

Appointment of Members of Corporation Commission; Terms; Commission.

2. That the governor shall, at least fifteen days before the first day of February, nineteen hundred and four, and at least fifteen days before the first day of February in each alternate year thereafter, appoint, subject to the confirmation of the General Assembly, in joint session, a citizen of this State, possessing the qualifications prescribed by the Constitution and by law to be a member of the "State Corporation Commission" (which shall be composed of three members), and whose term of office shall be that prescribed by the Constitution, and shall begin on the first day of February next succeeding his appointment and confirmation, except in the case of an appointee to fill a vacancy, or where the General Assembly fails to confirm an appointee to a full term of office before the date fixed by law for the commencement of his said term of office; in either case the term of office of any such appointee shall begin from the date of his qualification, and shall be for the unexpired portion of the term of office to which he shall be so appointed and confirmed. The members of the commission first appointed and confirmed, and those
hereafter appointed and confirmed, shall hold office for the
128 respective terms for which they have been, or may hereafter be, appointed, and until their respective successors in office have been appointed, confirmed, and qualified, unless they shall sooner be removed from office as prescribed by the Constitution or by law. The governor shall commission each of the members of the

commission, and said commission shall be filed by the members in the office of the clerk of the commission.

Who Eligible to Serve as a Member of the Commission; Qualifications, etc.

3. That no person shall be eligible to serve as a member of the State Corporation Commission who, on the date of the commencement of his term of office, shall be employed by or hold any office in relation to any transportation or transmission company, or is in any way financially interested therein, or is engaged in the practice of law; nor shall any person be eligible to appointment as a member of the commission unless at the time of his appointment he is a qualified voter under the Constitution and laws of this State. One of the commissioners shall have the qualifications prescribed for judges of the supreme court of appeals.

Oath of Office.

4. That the members of the commission and the officers thereof, for whose appointment provision is made either by the Constitution or by law, before entering upon the discharge of the duties of their respective offices, shall, in addition to the oath prescribed by section thirty-four of the Constitution, severally take and subscribe the following oath, to-wit:

"I, —— ——, do solemnly swear (or affirm) that at the present time I am not employed by, and do not hold any office in relation to, any transportation or transmission company, and have not in any wise any financial interest in any such company, and am not engaged in the practice of law, and that during the term of my office as — I will not either, directly or indirectly, be employed by
129 or hold any office in relation to any transportation or transmission company, or in any wise be financially interested in any such company, or be engaged in the practice of law, so help me God."

But the said additional oath shall be taken and subscribed by the first members of the commission and by the officers thereof as soon as practicable after the passage of this act.

The oaths prescribed by the Constitution and this act may be taken and subscribed before any officer authorized by the laws of this State to administer oaths, and shall be certified by such officer and recorded on the minutes of the proceedings of the commission, and then returned by its clerk as required by law as to the oaths of other State officers.

Offices of Commission to be Located in the City of Richmond; Where Notice, Writ or Process to be Returnable; When Public Sessions May be Held Elsewhere.

5. That the offices of the commission shall be located, and its public sessions, held, in the city of Richmond, and all notices, writs, and processes issued by the commission shall be made returnable to, and command the corporation or person against whom directed

to appear before the commission and answer on a certain day to be named therein: provided, however, the commission may in its discretion, if public necessity or the convenience of the parties require, hold public sessions elsewhere in the State, and may order any notice, writ, or process to be made returnable to the place of any such session; and for the holding of any such session the commission may occupy the court-room of the court-house of the city or county wherein such session may be held if said court-room shall not at the time be in use for the sessions of the court of any such city or county.

Offices.

6. That the rooms in the State library building now occupied as offices by the railroad commissioner shall be the offices of the
130 commission, its clerk, bailiff, assistants, and subordinates until otherwise provided by law, and the register of the land office is hereby directed to have the said rooms fitted up in a suitable manner for the use and occupation of the commission and its officers. And the sum of five hundred dollars, or so much thereof as may be necessary, is hereby appropriated for that purpose out of any moneys in the treasury not otherwise appropriated.

Clerk, Assistant Clerk, Bailiff, Stenographer, &c., Qualifications and Terms.

7. That the commission shall have a clerk, a first assistant clerk, a bailiff, and a stenographer (who shall also be a typewriter), each of whom shall have the qualifications for office, be clothed with the power, discharge the functions and perform all the duties hereinafter prescribed, and such other duties as may be prescribed or required by the commission, and all of whom shall be appointed by the commission, and whose respective terms of office shall be as prescribed by the commission, and they shall be subject to removal by the commission as hereinafter in this act provided. The officers so appointed shall hold office until their successors have been appointed, qualified, and given bond as required by law, unless they shall sooner be removed from office, as hereinafter provided.

Officers to be Residents of the State and Qualified Voters.

8. That the officers of the commission shall at the time of their appointment be actual residents of this State, and qualified voters therein, under the Constitution and laws thereof.

The First Members of the Commission to Meet, Organize, Appoint Clerical Force, &c.; When the Commission to be Vested With Powers and Function of Office.

9. That the persons appointed, confirmed, and commissioned to be the first members of the commission under the provisions of
131 section one hundred and fifty-five of the Constitution shall, as soon as practicable, meet in the office now used by the railroad commissioner and organize by taking and subscribing the oaths

of office prescribed by the Constitution and by this act, and elect one of their number as chairman of the commission, appoint a clerk, a first assistant clerk, a bailiff, and a stenographer; and when organized the commission shall have all the powers, discharge all the functions, and perform all the duties prescribed by the Constitution and by law.

When the Office to Become Vacant; How Vacancies Filled.

10. That if any person heretofore or hereafter appointed and confirmed to be a member of the commission, or if any person appointed an officer of the commission, shall fail to qualify as required by the Constitution or by law, or to give any bond required by law of any such officer within thirty days after the date fixed by the Constitution or by law, as the commencement of the term of office to which he shall be appointed, then such office shall because of such failure to qualify, or to give any required bond within the time aforesaid, become vacant, and such vacancy shall, in the case of members of the commission, be filled as prescribed by section one hundred and fifty-five of the Constitution, and in the case of officers and appointees of the commission, be filled by appointment of the commission.

Duties of Clerk; Records; Certified Copies Same Legal Effect.

11. That the clerk of the commission shall keep a minute book in which shall be recorded all the proceedings, orders, findings, and judgments of the public sessions of the commission, and the minutes of the proceedings of each day's public session shall be read and approved by the commission and signed by its chairman, or acting chairman; he shall, subject to the supervision and control of the commission, have custody of and preserve all of the records, documents, papers, and files of the commission, or which may be filed before it in any complaint, proceeding, contest or controversy,
132 and said records, documents, papers, and files shall be open to public examination in the office of said clerk to the same extent as the records and files of the courts of this Commonwealth; he shall, when requested, make and certify copies from any record, document, paper, or file in his office, and if required, affix the seal of the commission thereto, and except when made at the instance of the commission or on behalf of the Commonwealth, he shall charge and collect the same fees as are fixed by law for like services rendered by the clerks of the courts of this Commonwealth, and any such copy, so certified, shall have the same faith, credit, and legal effect as copies made and certified by the clerks of the courts of this Commonwealth from the records and files thereof; he shall certify all allowances made by the commission to be paid out of the public treasury for witness fees, service of process, or other expenses; issue all notices, writs, processes or orders awarded by the commission or authorized by law, or by the rules of the commission; he shall receive all fines and penalties imposed by the commission, all moneys collected on judgments, all registration fees required by law to be paid by corporations, all fees collected by any officer of the commis-

sion, and the tax on the seal of the commission, and shall keep an accurate account of the same and what disposition has been made thereof, together with all fees collected by him for services rendered, either by him or his assistants, and shall, at least once in every thirty days during his term of office, render a statement of all such receipts and collections to the auditor of public accounts, and pay the same into the treasury of the Commonwealth, and shall keep all such other accounts of such collections and disbursements, and shall make all such other reports thereof as may be required by law or by the regulations prescribed by the auditor of public accounts; and generally shall have the powers, discharge the functions, and perform the duties of a clerk of a court of record in all matters within the jurisdiction of the commission.

133 Duties and Powers of First Assistant Clerk.

12. That the first assistant clerk of the commission shall have the powers, discharge the functions, and perform the duties in all matters within the jurisdiction of the commission of a deputy clerk of a court of record, and shall perform as well the duties of the clerk of the commission during the absence of said clerk, and in case of the death, resignation, incapacity, or removal from office of the clerk, he shall be the acting clerk of the commission until the vacancy in the office of clerk shall be filled.

Duties and Powers of the Bailiff.

13. That the bailiff of the commission shall, in all matters within the jurisdiction of the commission, have the powers, discharge the functions, and perform the duties of a sheriff or sergeant under the law; he shall preserve order during the public sessions of the commission, and may make arrests and serve and make return on any writ or process awarded by the commission, and execute any writ, order, or process of execution awarded upon the findings or judgments of the commission in any matter within its jurisdiction.

Duties of the Stenographer, &c.

14. The stenographer and other assistants and subordinates of the commission shall perform the duties required of them by law or by the commission, under its rules, regulations, and requirements.

The Commission to Require Its Officers to Enter Into Bond, Amount, Conditions, and Recordation of Same.

15. The commission shall require its clerk, first assistant clerk, and bailiff, before entering upon the discharge of the duties of their respective offices, each to enter into bond, with surety to be approved by the commission, in such penalty as the commission
134 may deem sufficient (not in any case less than five thousand dollars), conditioned for the faithful performance of the duties of their respective offices, and for the prompt and full accounting for and payment into the treasury of all moneys received

by them, respectively, as officers of the commission. The said bonds shall be made payable to the Commonwealth, and may be proceeded on and enforced in any circuit or corporation court in like manner as the official bonds of other officers of this Commonwealth, or of its courts. Said bonds shall be recorded in the record of the proceedings of the commission, and the original bonds transmitted by its clerk to the auditor of public accounts, who shall file and preserve the same in his office.

Powers of the Commission.

16. The commission shall have power and authority to require, by its rules, regulations, and requirements, all corporations chartered under the laws of this State, and all foreign corporations, doing business in this State, to perform and discharge any public duty or requirement imposed upon such corporations by the Constitution, or by law, and may require all such corporations to furnish such reports to the commission as may be provided by the Constitution, or by law, and the commission may enforce against any such corporation, by its judgments and processes, any fine or other penalty imposed by law for the failure of any such corporation to perform any public duty required of it, or to comply with any requirement of law, or any lawful regulation of the commission in reference to the same. The commission may require the establishment by transportation companies of separate waiting rooms at all stations, wharves, or landings for the white and colored races.

135 Duties of the Commission with Respect to Transportation Companies, &c.

17. It shall be the duty of the commission to make inquiry and examination from time to time into the acts and proceedings of railroad, canal, steamboat, steamship, or other transportation companies, and other chartered common carriers and transmission companies, doing business in this State, their officers and agents, for the purpose of ascertaining whether anything has been done or omitted in violation or contravention of their charters, or of the law.

The Commission to Examine all Railroads, &c.

18. The commission shall examine all the railroads and the works and equipment thereof, and the works and equipment of all other transportation companies, and keep itself informed as to their physical condition and the manner in which they are operating with reference to the security and accommodation of the public, and the compliance of the several companies with the provisions of their charters and the laws of the Commonwealth. And the provisions of this section shall apply to all railroads and other transportation companies, and to the corporations, trustees, receivers, or other person owning or operating the same.

The Commission to give Notice to Transportation or Transmission Company of Violation of Law, and Compel Compliance with Same.

19. Whenever, in the judgment of the commission, it shall appear that any transportation or transmission company has violated any law of this State, or has neglected in any respect or particular to comply with the terms of its charter, or with the provision of any of the laws of the Commonwealth, it shall give notice thereof in writing to such company or the person operating the same; and if the violation or neglect be continued after such notice, the commis-
136 sion shall take such proceedings and impose such fines or penalties within its jurisdiction as shall be necessary to compel such transportation or transmission company to comply with the terms of its charter and the provisions of the laws of the Commonwealth.

The Commission to Compel Railroad to Make Repairs When Necessary; Notice; Railroad May be Heard Thereon; Penalty.

20. Whenever in the judgment of the commission it shall appear that repairs are necessary upon any railroad, or that any addition to its rolling stock, or addition or improvement in the equipment of any other transportation line, or any enlargement of or improvement in the stations or station houses, waiting rooms, wharves or landings, or any change in the mode of operating the road, or other transportation line, and conducting its business, is reasonable and expedient in order to promote the security and accommodation of the public, it shall give ten days' notice in writing to the company or person operating the road, or other transportation line, of the improvements and changes which it adjudges to be proper, designating when and where the contemplated action in the premises will be considered and disposed of, and such company or person shall be afforded a reasonable opportunity to introduce witnesses and to be heard thereon, and any such company or person failing or refusing to obey any valid order or requirement of the commission in the premises within such reasonable time, not less than ten days, as shall be fixed in the order of the commission, it may impose upon any such company or person the fines and penalties prescribed by the Constitution and by law for its or his failure to obey the orders and requirements of the commission and the requirements of the law, and enforce the payment and collection thereof by its judgments and processes.

When Commission to Make an Examination of Road; Notice; Fines; How Same may be Enforced.

21. Upon the complaint and application of the mayor or
137 counsel of any city or town, or the board of supervisors of any county within which any part of any transportation or transmission line is located, it shall be the duty of the commission to make an examination of the physical condition and operation thereof. Before proceeding to make such examination in accordance with

such application, the commission shall give to the applicants and the corporation or person operating any such line reasonable notice in writing, of the time and place of entering upon the same. If upon such examination it shall appear to the commission that the complaint alleged by the applicant is well founded, it shall so adjudge and shall notify such corporation or person of its adjudication; and if such corporation or person fail for sixty days after such notification to remove the cause of complaint, the commission shall impose the fines and penalties provided by the Constitution and by law for its failure to obey the orders and requirements of the commission, and enforce the collection thereof by its judgments and processes.

Commonwealth to be Complainant, &c.

22. That in all complaints, proceedings, contests, or controversies by or before the commission, whether instituted by the Commonwealth or by the commission of its own motion, the Commonwealth shall be complainant, and the party against whom the complaint is preferred, or the proceeding instituted, shall be the defendant. Any party complainant or defendant in any complaint, proceeding, contest or controversy shall be entitled to process, to convene parties, compel the attendance of witnesses, or the production of books and papers, in any proceeding or hearing before the commission.

Proceedings to be as in Courts of Record.

23. That the commission, on hearing of all complaints, proceedings, contests, or controversies, in which it shall be called upon to decide or render judgment in its capacity as a court of record,
138 shall observe and administer the common and statute law rules of evidence as observed and administered by the courts of this Commonwealth, in like manner as complainants and defendants in the courts of this Commonwealth.

Perjury.

24. That any person who shall wilfully swear falsely touching any material fact or matter in any complaint, proceeding, investigation, contest or controversy instituted or pending before the commission shall be deemed guilty of perjury.

The Commission to Cause its Rules of Procedure, &c., to be Entered of Record and Printed: Distribution of Copies.

25. That the commission shall cause its rules of order and procedure to be entered upon the records of its proceedings and to be printed, as well as all amendments and additions to the same, and shall furnish copies thereof to county and city clerks and to any citizen of this State upon application therefor.

The Commission to Summon Party Before Imposing Fine or Penalty; Contempts; Notice to be Given as to Rules or Orders Directed Against One or More Companies; General Order, Rule, &c., to be Published; Suspension of Order During Appeal; Penalties.

26. That the commission, before entering any judgment for any fine or penalty imposed by law shall summon or rule the party upon whom such fine or penalty is sought to be imposed to appear before the commission at some public session to be designated in the process, to show cause against such fine or penalty, and why the same should not be imposed and judgment rendered therefor; provided, that the provisions of this section shall not apply to contempts com-
139 mitted in the presence of the commission while in public session; and before the commission shall make any order, rule, regulation, or requirement directed against any one or more companies by name, the company or companies to be affected by such order, rule, regulation, or requirement shall first be given by the commission at least ten days' notice of the time and place when and where the contemplated action of the commission in the premises will be considered and disposed of, and shall be afforded a reasonable opportunity to introduce evidence and to be heard thereon, to the end that justice may be done; and before the commission shall make or prescribe any general order, rule, regulation, or requirement, not directed against any specific company or companies by name, the contemplated general order, rule, regulation, or requirement shall first be published in substance, not less than once a week for four consecutive weeks, in one or more newspapers of general circulation published in the city of Richmond, Virginia, together with notice of the time and place when and where the commission will hear any objections which may be urged by any person interested, against the proposed order, rule, regulation, or requirement; and every such general order, rule, regulation, or requirement made by the commission shall be published at length for the time and in the manner above specified before it shall go into effect, and shall also, as long as it remains in effect, be published in each subsequent report of the commission. Any corporation failing or refusing to obey any valid order or requirement of the commission within such reasonable time, not less than ten days, as shall be fixed in the order, may be fined by the commission such sum, not exceeding five hundred dollars, as the commission may deem proper, or in such sum in excess of five hundred dollars as may be prescribed or authorized by law; and each day's continuance of such failure or refusal after due service upon such corporation of the order or requirement of the commission shall be a separate offense; provided, that should the operation of such order or requirement be suspended pending an appeal there-
from, the period of such suspension shall not be computed
140 against the company in the matter of its liability to fines or penalties; provided, further, that the power of the commission to impose the penalties prescribed by the Constitution, or by the law, for the failure or refusal of any corporation to obey its valid orders and requirements, shall not be construed to relieve any company or corporation from the penalties now prescribed or hereafter to be

prescribed by law for the failure or refusal of any such company or corporation to perform any public duty or requirement prescribed, or which may be prescribed by any law of this State, but that such penalties may be enforced by the commission in addition to the penalties authorized to be imposed by the Constitution and by law for failure or refusal to obey any of its valid orders or requirements.

Powers of the Commission with Respect to Rendering and Enforcing Judgments, Penalties, &c., Collection and Payment of Same into the Treasury.

27. The commission shall have power and authority in all matters of which it has jurisdiction under the Constitution, or the laws of this Commonwealth, to render and enter up judgment for fines and penalties, or for the recovery of money, in any complaint, proceeding, contest, or controversy, whether instituted of its own motion or otherwise, and to issue process of execution thereon, which may be levied and executed in like manner as executions awarded and issued upon the judgments or decrees of the courts of law or equity of this Commonwealth. All judgments of the commission for fines or penalties, for contempt, or for the violation of any provision of the Constitution, or the laws of this State, or for the failure or refusal of any corporation to obey and observe the lawful rules, regulations, or orders of the commission, shall be entered up in favor of the Commonwealth, and when collected shall be paid by the clerk of the commission into the treasury, as hereinbefore provided.

141 The Commission to Have Power to Punish for Contempt by Fine or Imprisonment, &c., to the Same Extent and Manner as Courts; Commitment to Jail, &c.: Writ of Error.

28. The commission shall have powers and jurisdiction possessed and exercised under the law by the courts of record of this Commonwealth to punish for contempt by fine or imprisonment, or by both, any person duly summoned to appear and testify before the commission who shall fail or refuse to appear and testify, without a lawful excuse, or who shall refuse to answer any proper question propounded to him by the commission in the discharge of its duty or who shall conduct himself in a rude, disrespectful, or disorderly manner before the commission, or any of them, deliberating in the discharge of duty in public session, and may, for any such contempt, impose the same penalties, either by fine or imprisonment, or by both, and render and enter up judgment in any such proceeding and enforce the same by process of execution or by commitment to jail, or by both, in the same manner and by like process and proceedings, and to the same extent, as may by law be done by any of the courts of this Commonwealth. The commission may commit any person adjudged by it guilty of contempt to the jail of any city or county in the Commonwealth, and the jailer thereof shall receive such person upon the commitment of the commission, attested by its clerk, first assistant clerk, or acting clerk, and confine such person in the jail of his city or county, as the case may be, for the term of imprisonment specified in the commitment, unless sooner discharged there-

from by due process of law. The said jailer shall receive for the board of any person so committed the same allowance made by law for other persons confined in such jail, which shall be paid out of the public treasury upon the allowance of the commission, certified as hereinbefore provided. The fines and judgments of the commission in any contempt proceeding may be reviewed, affirmed, reversed, or modified, as justice may require, on writ of error from the commission to the supreme court of appeals.

112 The Commission May Award and Issue, Serve, Execute, and Return Process, &c., and Compel Attendance of Witnesses, as Courts.

29. That the commission shall, in all matters within its jurisdiction, have the power and authority to award and issue, have served, executed, and returned, any writ, notice, process, order, or order of publication which may by law be awarded, issued, served, executed, or returned by or to any court of law or equity in this Commonwealth, for the purpose of compelling the attendance of witnesses, the production of books and papers, the convening of parties, or the enforcement and execution of its findings, orders, or judgments.

Writs, &c., to Run in the Name of the Commonwealth; by Whom Issued and Served; Fees; Duties of Bailiff; Penalty for Failure to Execute Writ, &c.

30. That all writs, processes, and orders of the commission shall run in the name of the Commonwealth, and shall be attested by its clerk, or first assistant clerk, or acting clerk, and shall be directed to its bailiff, and may be served, executed, and returned by the said bailiff, in any city or county of the State, or by the sergeant or sheriff, or any constable, of any city or county in this State within his bailiwick. All writs, notices, processes, or orders of the commission may be served, executed, and returned in like manner and upon like persons or property as the processes, writs, notices, or orders of the courts of record of this Commonwealth, and when so served, executed, and returned shall have the same legal effect. The bailiff or other officer serving or executing any writ, notice, process, or order of the commission shall receive the same fees and commissions allowed by law for like services to the sergeants and sheriffs of the cities and counties of this State: provided, that the bailiff of the commission shall account for and pay to its clerk all fees and commissions received by him for any services which he may render, which
113 shall be accounted for and paid by the clerk of the commission into the treasury, as hereinbefore provided. The bailiff, or any other officer hereinbefore named, who shall fail to execute and return any writ, notice, process, or order of the commission shall be subject to the penalties prescribed by law for the failure to execute and return the process of any court, which penalties may be enforced by the judgment of the commission.

The Commission to Tax and Collect Like Fees and Costs as Courts; Fees and Mileage of Witnesses.

31. That the commission shall cause to be taxed and collected in all complaints, proceedings, contests, or controversies instituted or pending before it, like fees and costs taxed and collected for like services by the officers of the courts of this Commonwealth; also, the fees and mileage of witnesses attending upon its public sessions, and may enter judgment for the same and issue execution thereon, which execution may be levied and executed in like manner as execution issued upon the judgments or decrees of the courts of law or equity of this Commonwealth: provided, that no costs shall be taxed or collected against the Commonwealth except on appeals of corporations under the provisions of section one hundred and eighty of the Constitution, which have been aggrieved by the assessments and ascertainments made by the commission under sections one hundred and seventy-six and one hundred and seventy-eight of the Constitution.

Judgments of the Commission to be a Lien on Real Estate When Duly Docketed, &c.; How Enforced; Clerks to Docket Judgments Certified by the Clerk of the Commission.

32. That the judgments of the commission for the recovery of money, fines, or penalties shall be a lien on the real estate of the judgment debtor when duly docketed and indexed in the judgment lien docket as the judgments of the courts of record are required by law to be docketed and indexed, in the county or city in which
144 the real estate of the judgment debtor is located, and the lien of such judgment may be enforced in equity before any court having jurisdiction to enforce liens. The clerks of the courts of the several cities and counties shall docket all such judgments on the lien docket of their respective courts when a copy thereof, certified by the clerk of the commission, shall be presented for that purpose.

When Sessions of the Commission Public; Judgments to be Rendered in Public Session; When Judgment Effective; Number, Time and Commencement of Session; One Regular Session Every Three Months.

33. That the sessions of the commission for the hearing of any complaint, proceeding, contest, or controversy instituted or pending before it, whether of its own motion or otherwise, shall be public, and its findings, decisions, and judgments shall be announced and rendered in public session. The judgments of the commission for fines or penalties, or for the recovery of money, shall take effect as of the date of such judgment, and when allowed by the commission in its order and entered up, the judgment shall bear interest from that date. The commission may, by its rules, provide for the number of its regular public sessions in each year, the time of their commencement, their duration, and for their adjournment; and may also provide for extra or special public sessions when, in their judgment, such extra or special public sessions may be necessary or required. The commission shall hold at least one regular public session in every three months in each year.

Appeal to Supreme Court; How Taken and Perfected; to be Heard Promptly, &c.; How Section Construed.

34. That the Commonwealth or any party aggrieved by any final finding, order, or judgment of the commission shall have, of right, regardless of the amount involved, an appeal to the supreme court of appeals, same to be taken and perfected within six months from the date of such final finding, order, or judgment, and the
145 supreme court of appeals may, on petition of the attorney-general, or any other party so aggrieved, if said petition be presented within six months from the date of the final finding, order, or judgment of the commission, award a writ of supersedeas to any such final finding, order, or judgment, and may review, affirm, reverse, or modify the same, as justice may require, and enter therein such order as may be right and just. All such appeals shall be taken and perfected, heard and determined, and the mandate of the supreme court of appeals certified down to the commission in the same manner as appeals in equity causes from the circuit or corporation courts of this Commonwealth to the supreme court; except such appeals shall be heard and disposed of promptly by the supreme court, irrespective of its place of session, next after *habeas corpus* and Commonwealth's cases already on the docket; provided, however, this section shall not be construed to interfere in any way with the provisions of subsections (*d*), (*e*), (*f*), and (*g*) of section one hundred and fifty-six of the Constitution, as to appeals from the action of the commission, prescribing rates, charges, or classification of traffic, or affecting the train schedule of any transportation company, or requiring additional facilities, conveniences, or public service of any transportation or transmission company, or refusal to approve a suspending bond, or requiring additional security thereon, or an increase thereof; but shall be construed to provide only for appeals from the final findings, orders, and judgments of the commission in cases not expressly provided for by the Constitution.

Suspending Bond on Appeal; Costs &c.

35. That the commission may require a suspending bond on any appeal, in such penalty and with such surety thereon as it may deem sufficient, and may during the pendency of any appeal, at any time, require the increase of any such bond or additional security thereon; provided, however, there shall be of right, regardless of the amount, an appeal from the action of the commission refusing to approve a suspending bond, or requiring an increase thereof, or ad-
146 ditional security thereon, in like manner as provided by subsections (*d*), (*e*), (*f*), and (*g*) of section one hundred and fifty-six of the Constitution. The commission may also require bond for the payment of costs in such penalty, and with such security, as it may deem sufficient, in any complaint, proceeding, contest, or controversy instituted or pending before it. All suspending bonds, and bonds for the payment of costs, taken or required to be taken by the commission, shall be made payable to the Commonwealth, and may be enforced in the name of the Commonwealth by motion or other legal proceeding or remedy before the commission, or in

any circuit or corporation court of this Commonwealth having jurisdiction of a motion or action on such bonds, and the process and proceedings thereon shall be as provided by law upon bonds of the like character required and taken by any court of this Commonwealth, and the commission or such circuit or corporation court may render and enter up like judgments upon such bonds as may, by law be rendered and entered upon bonds of like character, and process of execution shall issue upon such judgments, and may be levied and executed as provided by law in other cases.

Transportation Company upon Final Decision of Appeal to Refund Amount Collected Pending the Appeal in Excess of that Authorized; Penalty; Amount of Judgment Distributed Among Those Entitled Thereto.

36. That if any transportation company, upon the final decision of an appeal from the action of the commission prescribing rates, charges, or classification of traffic, confirming or modifying the action of the commission, shall fail to refund in the manner and within the time prescribed in the notice of the commission all amounts which the appealing company may have collected pending the appeal, in excess of that authorized by such final decision, upon notice to such corporation by the commission of such final decision,
147 then the commission, after thirty days' notice to any such company, may, unless the amount required by such order be paid to the clerk of the commission, render and enter judgment in the name of the Commonwealth, for the use of the persons, firms, and corporations entitled to the same, against any such company for the aggregate amount of such collections and for costs, and may enforce the amount of such judgment and costs by process of execution as hereinbefore provided as to the enforcement of the judgments of the commission. The commission shall, upon the collection of said judgment, forthwith distribute the amount thereof, through its clerk, among the parties entitled thereto, respectively, in such manner as it may by its rules or orders prescribe, and shall, upon the payment or collection of any such judgment, enter the same satisfied upon its records, and have the same entered satisfied on the judgment lien docket of the court of any city or county where the same may have been docketed, and the satisfaction of any such judgment shall be a bar to any further action or recovery against any such corporation to the extent of such recovery.

Accidents.

37. The commission may investigate the cause of any accident on any transportation line which, in its judgment, shall require investigation.

Transportation of Convicts and Insane Persons.

38. The commission is authorized to enter into contracts with the several railroads and other transportation companies, doing business in this State, for the transportation of convicts, insane, or other per-

sons, who are cared for by the State, and of sheriffs and all necessary guards, to and from the penitentiary and the several State hospitals in this State, upon such terms as the commission and the several companies may agree, not to exceed two cents per mile for each person transported under such contract. Said contracts
148 may be renewed or extended for such time as the commission shall deem to be to the interest of the State.

The Commission to Determine the Most Direct Route, Furnish Schedules, &c., to Hospitals and Penitentiary.

39. The commission shall determine the most direct and practicable route from each courthouse by which to convey persons to the penitentiary and the several State hospitals, and shall file with the auditor of public accounts, the superintendent of the penitentiary, the superintendents of the several State hospitals, and the clerks of the several counties and corporations, a schedule of the route determined upon.

The Commission to Furnish Schedule Certificates of Transportation; by Whom Signed; How Companies May Collect on Same.

40. The commission shall furnish with such schedule certificates of transportation in the form agreed upon in its contract with the companies. Said certificates shall be signed by the clerk of the commission, and shall be taken up by the conductor or other agent authorized by said companies to collect fare, as other tickets or fares are collected. They shall be presented by the companies holding the same, either monthly or quarterly, as may be determined upon by the commission and the companies, to the auditor of public accounts, who shall examine the same, and if found correct, pay them as other claims against the State are audited and settled.

The Commission to Furnish Compilation of Statute Laws, &c., Governing Common Carriers, Distribution of Same; Rules to be Posted.

41. The commission shall, annually, on the first day of January, publish a compilation of the statute laws governing common carriers in the State of Virginia, together with a compilation of the rules and regulations prescribed for their government by the commis-
149 sion, and shall furnish a sufficient number of copies to each railroad company or transportation company, or person operating the same, to enable such company or person operating the same to post and keep posted conspicuously in every passenger and freight depot of the company, a copy of such laws, rules and regulations; and every such company, or person operating the same, is hereby required to see that such copies, when furnished by the commission, are posted and kept posted in the manner prescribed.

Seal of the Commission; to What It May be Affixed; Its Force and Effect; Fee.

42. That the commission shall have and use a common seal, to consist of a circular die with the coat-of-arms of Virginia and the title "State Corporation Commission" stamped upon the face of the die, and shall have power to affix said seal to any paper, record, or document when necessary for the purpose of authentication, and such seal, when so affixed to any paper, record, or document emanating from the commission or its clerk's office, shall have the same force and effect for authentication as the seal of any court of record in this State. The clerk of the commission shall collect a tax of one dollar for each impression of said seal upon any paper, record, or document, for which tax he shall account to the auditor of public accounts, and pay the same into the public treasury as hereinbefore provided.

Docket.

43. That the commission shall keep a docket of all complaints, proceedings, contests, and controversies instituted or pending before it, and all cases shall be numbered on the docket in the order in which they were instituted, and the papers therein jacketed and numbered in the same consecutive order, and when finally determined and disposed of, the papers and files shall be filed and preserved in the same numerical order and properly indexed for convenient future reference.

150 Allowance for Expenses, &c., to be Paid Out of the Public Treasury; Compensation, Mileage, &c., of Witness.

44. The commission shall, by order entered upon the records of its proceedings, make all allowances to be paid out of the public treasury for expenses, witness fees, and mileage, and for service of process, and when so allowed and certified by its clerk to the auditor of public accounts, the last-named officer shall draw his warrant for the payment of the amount of any such allowances out of the public treasury: provided, that the commission shall not allow to any witness exceeding one dollar per day for his attendance, nor exceeding five cents per mile for each mile traveled to and from the place of attendance, and shall not make any allowances to be paid out of the public treasury save when the expenses incurred, the witness attendance, or the services of process, is at the instance of the commission, or on behalf of the Commonwealth.

Register of Corporation; List of Charters to be Furnished by Secretary of the Commonwealth.

45. That the commission shall have made and kept in its clerk's office a register of all corporations, which register shall contain the corporate names of all corporations heretofore chartered and existing at this date, so far as the same may be obtainable, and those hereafter chartered by the laws of this State, and of all foreign corporations heretofore or hereafter licensed to transact business in this

State, and as to domestic corporations shall contain also the following information, to-wit: Date of incorporation. Names and residences of officers and directors. Amount of capital stock, and whether preferred or common, or both, and the amount of each. Amount of bonds to be issued. Nature of corporate enterprise or business to be conducted. The place of its principal or general office or place of business.

151 The secretary of the Commonwealth shall forthwith prepare and furnish to the commission a list of all charters recorded in his office up to April first, nineteen hundred and three, containing the above information so far as shown by the records of his office.

The Commission to Issue All Charters, &c., and to Certify Same Under Its Seal to the Secretary of the Commonwealth; Recordation; Granting License to Foreign Corporations; Fees.

46. The commission shall issue all charters and all amendments, extensions, and renewal of charters, upon application, complying with the provisions of the incorporation laws of this State, and when any charter, or amendment, extension, or renewal of charter is issued, shall certify the same, under its seal, to the secretary of the Commonwealth for recordation as required by law, and the commission shall have the granting of all licenses to foreign corporations to transact business in this State. The commission shall, before approving any application or petition for a charter, or granting any license to any foreign corporation to transact business in this State, require the payment of the fees prescribed by law, and on or before the first day of March in each year, in addition to the franchise tax and the fees otherwise prescribed by law, require each domestic corporation, other than a purely charitable institution, and each foreign corporation doing business in this State, to pay a registration fee as follows: Where the proposed maximum capital stock is fixed at fifteen thousand dollars or under, or if such corporation is organized on a mutual basis or without capital stock, five dollars; in excess of fifteen thousand dollars and not over fifty thousand dollars, ten dollars; in excess of fifty thousand dollars and not over one hundred thousand dollars, fifteen dollars; in excess of one hundred thousand dollars and not over three hundred thousand dollars, twenty dollars; and in excess of three hundred thousand dollars, twenty-five dollars; all of which fees shall be collected and received by its clerk and accounted for and paid into the public treasury as hereinbefore provided.

152 The Commission to Designate Depository; Deposits; Checks; Officer Collecting Judgment to Pay Same Within Ten Days; Penalty.

47. That the commission shall designate some State depository as a place of deposit for the moneys received by its clerk under this or any future act of the general assembly, and shall require its clerk to deposit therein all moneys received by him at least once in every twenty-four hours, and all checks upon said depository drawn by

said clerk shall be countersigned by the chairman or acting chairman of the commission. That the bailiff of the commission, or any sergeant, sheriff, or constable who shall collect any judgment, or any part thereof, rendered by the commission, shall, within ten days after such collection, pay the amount thereof, either in current funds or by certified check, to the clerk of the commission. Any officer of the commission, or any sergeant, sheriff, or constable who shall omit or fail to perform any of the requirements of this section, shall be fined not less than five hundred dollars nor more than one thousand dollars, which may be imposed and judgment rendered therefor and enforced by the commission. All proceedings against any such officer and the surety on his official bond, may be had as provided by law in reference to official bonds, for default in the accounting for, or payment over, of any moneys collected or received by him under the provisions of this act.

The Commission to Notify Corporation of the Amount of Registration Fee.

48. That the commission shall annually, on or before the first day of December, notify each corporation subject to a registration fee of the amount thereof, and when the same is payable, and when paid its clerk shall promptly receipt therefor to the corporation paying the same, such notice to be mailed to the last address furnished by such company.

153 Free Transportation to Members of the Commission.

49. That all transportation companies operating in this State shall, on the order of the commission, attested by its clerk, or on an order signed by any member of the commission, furnish free transportation to the members of the commission and its officers, when traveling on official business, and the order for such transportation shall show that the same is desired for official business.

Supplies, Printing, Expenses, &c.

50. That the commission shall have authority to purchase all necessary supplies, and to have all necessary printing and publishing done, and to secure all telephone and telegraph service necessary to the efficient discharge of its duties, and the same shall be paid out of the fund appropriated for its incidental and contingent expenses: provided, however, that all printing necessary for the commission shall be done by the public printer on its order.

Report of the Commission.

51. That the commision shall, on or before the first day of December in each year, tabulate and publish in statistical form such reports made to it in pursuance of the Constitution and laws of this State, as required by subsection (*a*) of section one hundred and fifty-six of the Constitution proper, and shall on the same date in each year, make report to the governor as required by subsection

(1) of said section, to be by him laid before the general assembly at each regular session thereof.

Impeachment.

52. That any member of the commission who, during the term of his office, shall be directly or indirectly employed by, or hold any office in relation to, any transportation or transmission company, or in any wise become interested therein, financially, or shall engage in the practice of law, or be guilty of misfeasance or malfeasance in office, shall be impeached and removed from office in the same manner provided for by the impeachment and removal of judges of the supreme court of appeals; and any officer of the commission for like causes, or for neglect of duty, or when, in the judgment of the commission, the public service will be promoted thereby, may be removed from office by the commission.

Board of Public Works and Railroad Commissioner to Surrender Records, Books, &c., to the Commission.

53. The board of public works and the railroad commissioner shall on the second day of March, nineteen hundred and three, or as soon thereafter as requested by the commission surrender and deliver to the commission the records, books, files, and papers of their respective offices, and thereafter said records, books, files, and papers shall be and remain a part of the records, books, papers and files of the commission.

Salaries.

54. That the annual salaries of the members and officers of the commission shall be as follows: Each commissioner, four thousand dollars; the clerk, two thousand dollars; the first assistant clerk, fifteen hundred dollars; the stenographer, twelve hundred dollars; and the bailiff, nine hundred dollars; and the auditor of public accounts shall draw his warrant upon the public treasury for the payment of said salaries in equal monthly payments for each month of their respective terms of office.

Not to Impair Jurisdiction of Courts; Concurrent Jurisdiction.

55. This act shall not be construed to take away or impair the jurisdiction of any court of this Commonwealth to hear and determine any proceeding, suit or motion of which it now has jurisdiction, for the enforcement of any fine or penalty against any corporation under the laws of this State, but that the powers and jurisdiction of the commission to hear, determine, and enforce such fines and penalties shall be construed to be concurrent.

Powers and Duties Vested in Commission.

56. The commission is hereby charged with all the duties and vested with all the rights, property, functions, and powers heretofore performed, vested in, and exercised by the board of public works, except in so far as the same may be in conflict with the Constitution and laws of this State, and the commission shall particularly perform the duties and exercise the powers heretofore performed and exercised by said board, prescribed in sections fifty-nine to seventy-eight, inclusive, of this act.

The Commission or Some Member to Attend the Sale of Work of Internal Improvement in which the State is Interested.

57. The commission, or some member thereof, shall, and is hereby directed and authorized to, attend the sale of any work of internal improvement in which the State is a stockholder or otherwise interested, whether such sale be made by virtue of mortgage, judgment, decree, or other lien.

When State may proceed against company by *quo warranto* and sell the works for abandonment or failure to use; deed of conveyance to be executed; collection of debts and proceeds of sale; purchaser to become corporation with privileges, &c., of old company.

58. If the works of any internal improvement company be not commenced and be completed within the time prescribed by law, or by its charter, or if after such works be completed, the company abandon them, or for three successive years cease to use and fail to keep them in good repair, in each of these cases the State may proceed against such company by writ of *quo warranto*, or information in the nature of a writ of *quo warranto*, and if in
156 any such proceeding there is a judgment against the company, the commission shall forthwith take possession of its work and property and sell the same (except the debts owing to the company), and convey the works and property so sold to the purchaser thereof as soon as the purchase money has been paid, the deed of conveyance to be executed by the chairman of the commission under its seal. The commission shall, moreover, collect, as far as practicable, the debts aforesaid, and apply the proceeds thereof, and of the said sale, after deducting the costs and expenses of the collection and sale, to the discharge of the liabilities of the company, and whatever remains after said liabilities are discharged, pay into the treasury of the State. Upon such conveyance to the said purchaser, he shall forthwith be a corporation by any name which may be set forth in such conveyance, or any writing signed by him and admitted to record in the county or corporation wherein the conveyance shall be admitted to record; and to the corporation thus created all the provisions of section twelve hundred and thirty-four of the Code shall apply, except that the franchises, rights, and privileges to which such corporation shall succeed and the duties which

it shall perform, shall be such as would have been had or performed by the first company but for the judgment aforesaid in the proceeding by writ of *quo warranto*, or information in the nature of a writ of *quo warranto*, save only as in said section provided.

The Commission May Convey State's Interest in Road to County.

59. It shall be the duty of the commission, with the consent of the board of supervisors of any county given at any regular meeting by a two-thirds vote of all elected in such county, where in their opinion the public interest will be promoted thereby, to transfer and convey the State's interest in any turnpike or plank road, or any part thereof, to the county or counties in which said road lies. The transfer shall be made by a formal order to be entered upon the minutes of the proceedings of the commission, and a copy to
157 be transmitted by its clerk to the clerk of the circuit or county court for record in the clerk's office in each county where the said road lies.

The Commission to Collect Dividends, &c., from Work in which State is Interested.

60. The commission shall be vested with power to collect any fund or dividend due from any work of internal improvement in which the State is interested, and to pay the same into the treasury to the credit of the sinking fund.

Proxies for Stock Held by State.

61. The commission, for all works in which the State may hold stock heretofore subscribed and not disposed of, shall from time to time appoint one or more proxies to represent the stock held by or on behalf of the State in the company having control of such work: provided, that the present proxies shall hold over until their successors are appointed.

Duty of State Proxies.

62. In cases in which it may be desired by the commission, its proxies shall cause to be transmitted to it copies of the reports of the proceedings of the directors of the companies in which they are proxies, the proceedings of the stockholders thereof, and other documents relating to the works, and shall make such reports as the commission may require or to the proxies may seem proper.

State Directors.

63. In every company to the stock of which the board of public works or the State has heretofore subscribed and which has not been disposed of, the commission shall appoint such portion of the directors as shall bear to the whole number of the directors of such company the same proportion, as nearly as possible, that the
158 stock held on behalf of the State in such company bears to the whole capital stock thereof.

When Appointed.

64. The appointment of directors in a company, according to the preceding section, shall be made by the commission before each annual meeting therein.

Terms of Directors and Proxies.

65. Proxies and directors appointed by the commission shall be in office from the time such appointment is in force until their successors are appointed, unless sooner removed. When a proxy fails to attend at any meeting, the commission, without removing him, may make a temporary appointment, to be in force during his absence.

The Commission to Keep Register of the Property of the State.

66. The commission and the second auditor shall cause to be registered, in books to be kept in their respective offices for the purpose, all claims, stocks, bonds, choses in action, and all property, real or personal, due or belonging to the State, with such description thereof as will enable easy reference to the same by any State officer or person interested.

Money Recovered by Action in Circuit Court of Richmond.

67. Any money forfeited to the commission, and any money which ought to be paid into the public treasury to the credit of the fund for internal improvement, shall be recovered, with interest on such money from the time the same ought to be paid by motion, after fifteen days' notice, or by action in the circuit court of the city of Richmond. The second auditor shall institute and prosecute in the name of the Commonwealth the proceedings after an order for such motion or action shall have been made by the commission.

159 Agents for the Collection of Debts, &c.

68. The commission may appoint agents for the collection of its debts or claims, and authorize them to secure payment thereof on such terms as it may approve, except it shall not appoint an agent to collect any judgment, fine, or penalty rendered or imposed by the commission.

When Commission May Purchase Estate Taken Under Execution.

69. When the estate of any person taken under execution or for sale under any decree or deed of trust for any such debt or claim will not sell for the amount thereof, the commission may purchase such estate.

May Sell and Convey Any Estate so Purchased.

70. The commission may sell any estate so purchased, at such time and on such terms as the commission may deem advantageous, and the commission shall execute a deed conveying to the purchaser all the interest which the commission may have in such land.

Compensation of Agent Under This Act.

71. For the services of any agent under this act, the commission may allow compensation not exceeding in any case, five per centum on the money actually paid into the treasury.

The Commission to Fix Tolls, &c.

72. Where the tolls of any canal, navigation, or bridge company are not prescribed by its charter, the commission shall fix such tolls as may seem to it reasonable, and may alter the same at its pleasure.

160 ### Assent by Stockholders to Sec. 65 of This Act.

73. If in any company incorporated and organized before the first day of July, eighteen hundred and fifty, to the stock of which the board of public works or the State has, before or since that date, subscribed, a resolution be adopted in general meeting of the stockholders (by the vote of the majority of the stockholders, other than the State), assenting to section sixty-five of this act, the same shall thenceforth be of the same force in respect to such company that it would be if it had formed a part of the act incorporating such company. If such assent be not given, the votes in the meetings of the stockholders of such company and the appointment of directors therein shall continue to be according to the laws in force on the day before the Code of eighteen hundred and eighty-seven took effect, unless it be a company whose charter is, by the terms thereof, subject to be altered, amended, or modified by the general assembly; in which case the said section sixty-five shall be of the same force in respect to it as if such assent had been given.

Sale by James River and Kanawha Company of Its Works, &c., to Richmond and Alleghany Railroad Company.

74. That so much of the act entitled "an act to authorize the James River and Kanawha Company to make sale and transfer of all its works, property, and franchises to the Richmond and Alleghany Railroad Company, and to define the powers and duties of the board of public works in reference thereto," approved February twenty-seventh, eighteen hundred and seventy-nine, as has not been carried into effect, shall continue in force, and the commission shall exercise all the powers and perform all the duties conferred and imposed upon the board of public works by the said act.

The Commission to Make Report Showing Condition of Work or Company in Which State Has an Interest.

75. The commission shall make report to the general assembly at each regular session, showing the condition of each work made on the State account, or to the stock of which the board
161 of public works or the State had heretofore subscribed, and giving such other information in relation thereto as it may deem pertinent. And the second auditor shall also report to the general assembly, at such regular session a succinct statement relative to

every such work, showing the gross amount of the year's income therefrom, the net balance of such income remaining, after paying current expenses, and interest on debts due on account of the work, and what percentage, such net balance is on the capital expended. On or before the first day of October the said reports shall be delivered to the superintendent of public printing, and he shall cause the same to be printed.

76. That subsection twelve of section one hundred and eighty-three, and sections twelve hundred and twelve, twelve hundred and thirty-six, twelve hundred and thirty-nine, twelve hundred and fifty-four, twelve hundred and ninety-eight, twelve hundred and ninety-nine, thirteen hundred, as amended by an act of the general assembly, approved March fourth, nineteen hundred; thirteen hundred and one, thirteen hundred and two, thirteen hundred and three, thirteen hundred and six, thirteen hundred and seven, thirteen hundred and eight, thirteen hundred and ten, thirteen hundred and eleven, as amended by an act of the general assembly, approved March fourth, nineteen hundred; thirteen hundred and twelve, thirteen hundred and thirteen, thirteen hundred and fourteen, thirteen hundred and fifteen, thirteen hundred and sixteen, thirteen hundred and seventeen, thirteen hundred and eighteen, thirteen hundred and nineteen, thirteen hundred and twenty, thirteen hundred and twenty-one, thirteen hundred and twenty-two, thirteen hundred and twenty-three, thirteen hundred and twenty-four, thirteen hundred and twenty-five, thirteen hundred and twenty-six, thirteen hundred and twenty-seven, thirteen hundred and twenty-eight, thirteen hundred and twenty-nine, thirteen hundred and thirty, thirteen hundred and thirty-one, thirteen hundred and thirty-two, thirteen hundred and thirty-three, and thirteen hundred and thirty-seven of the Code of eighteen
162 hundred and eighty-seven, and sections eleven, twelve, and thirteen of the act of the general assembly of Virginia, approved March third, eighteen hundred and ninety-two, entitled an act to further regulate and control common carriers doing business in this State, and further defining the duties of the railroad commissioner in relation thereto, be, and the same are hereby, repealed.

77. This act shall be in force from its passage.

COMMONWEALTH OF VIRGINIA:

I, D. Q. Eggleston, Secretary of the Commonwealth of Virginia, and keeper of the seals thereof, do hereby certify that the foregoing (excepting the headings to the sections thereof) is a true copy of an act of the General Assembly of Virginia, entitled "An act to put into effective operation the provisions of the constitution relating to the creation, appointment and organization of the 'State Corporation Commission,' its jurisdiction, powers, functions and duties; the qualifications of the members and officers thereof, their appointment and salaries; the location of its offices and places and times of its public sessions; its writs, processes, orders, findings and judgments; appeals from its orders, findings and judgments, and its expenses, etc.," approved April 15, 1903, as the same is published according to law; that said act is still in full force and effect, and has been so continuously since prior to January 1st, 1904,—with this exception, that,

by an act approved March 15, 1906, section 58 of the foregoing act was amended, and that said section is printed above as it reads after, instead of before, its amendment.

Given under my hand and the Lesser Seal of the Commonwealth, at Richmond, this 25th day of June, in the year of our Lord nineteen hundred and seven.

[Lesser Seal of the Commonwealth.]

D. Q. EGGLESTON,
Secretary of the Commonwealth and
Keeper of Seals.

163 DEFENDANTS' EXHIBIT NO. 3.

COMMONWEALTH OF VIRGINIA:

Department of the State Corporation Commission.

CITY OF RICHMOND, *Tuesday, Oct. 6,* 1903.

The Commission having, as required by law, formulated a set of Rules of Practice and Procedure, in cases and proceedings before it, it is ordered that the same become operative on and after this date, and that they be spread in full upon the minutes of the Commission, and being so recorded in the Order Book, are in the words and figures following, viz:

Rules of Practice and Procedure Before the State Corporation Commission of Virginia.

Public Sessions.

1. The regular Public Sessions of the Commission, sitting as a court, for the hearing of contested cases and matters properly coming before it, will be held at its offices, in the City of Richmond, on the second Monday in January, April, June, September and November in each year. These sessions may be adjourned from time to time, and shall last so long as the business before the Commission, and the public interests may require. These sessions may be adjourned, during their respective terms, to any other place in the State, upon order of the Commission, that the public necessity or the convenience of the parties require an adjournment.

Special judicial sessions of the Commission may be held at any time upon order of the Commission, or a majority of its
164 members, in the City of Richmond, or elsewhere in the State, for the hearing of all matters over which the Commission has jurisdiction.

Parties.

2. All complaints, proceedings, contests, or controversies, before the Commission, shall be instituted in the name of the Commonwealth, as complainant, and the party against whom the complaint is preferred, or the proceeding instituted, shall be the defendant;

in all proceedings instituted by the Commission of its own motion, the complainant shall be, "The Commonwealth at the relation of the State Corporation Commission"; in all other complaints and proceedings, instituted by parties, the complainant shall be styled "The Commonwealth at the relation of ——."

Any person, firm, corporation, or association, or any commercial body, may institute a complaint before the Commission. When instituted by an unincorporated association or mercantile body, the complaint must be in the name of a committee of not less than two persons on behalf of such association or body.

When the complaint concerns anything done, or omitted to be done, by a single carrier or other corporation, no other need be made a party, but if it relates to joint tariffs, or questions in which two or more carriers or other corporations are interested all such must be made parties. A complaint may embrace several carriers, or lines of carriers, operated separately, in the same proceeding, when the subject matter of the complaint involves substantially the same violation of the law, or of the rules and regulations of the Commission, by the several carriers or lines. Persons or carriers not originally parties may apply, in any pending case or proceeding, for leave to intervene, and to be heard upon the questions involved. Such application must be by petition, verified by oath, which must set forth the petitioners' interest in the proceeding.

165 Petitions and Complaints.

3. All complaints for the redress of alleged grievances or violation of law by the defendant must be in writing and addressed to the Commission. Such petition or complaint must distinctly and plainly set forth the grounds of complaint, the items being numbered, and the petition or complaint must be verified by affidavit. The name of the corporation, or other parties complained against, must be stated in full, and the address of the complainant, with the name and address of his attorney or counsel, if any, must appear upon the petition, where the complaint is made otherwise than on the motion of the Commission.

Notice.

4. The petition or complaint may be filed before the Commission, or with its clerk, and, thereupon, a notice, in the form of a writ, shall be issued, according to law, by the Clerk, directed to the Bailiff of the Commission or other proper officer, summoning the defendant or defendants to appear before the Commission on the day named therein, which shall not be less than ten days from the filing of the complaint. The said writ and notice, and a copy of the complaint, shall be served upon the defendant or defendants, and return made according to law.

Answers.

5. Upon the day named in the writ, or notice, the defendant or defendants shall file before the Commission an answer in writing, specifically admitting or denying, by items, the material allegations of the complaint, and setting forth the facts which will be relied upon

to support any such denial. The answer shall be verified by affidavit, and be signed by the attorney or counsel, if there be such. If the parties are ready, upon the filing of the answer, the Commission may proceed at once to hear the matter of contest. If either party be not prepared for the hearing, then an adjournment may be had
166 and the day for the hearing fixed upon the application of either party, in the discretion of the Commission.

Instead of answering the complaint, defendant or defendants may demur to the same, filing a demurrer in writing on the return day.

Amendments.

6. Upon the application of any party, amendments to any complaint or answer in any proceeding or investigation may be allowed by the Commission, in its discretion.

Stipulations or Agreed Facts.

7. The parties to any complaint or proceeding before the Commission may, by stipulation in writing, filed with the Commission, agree upon the facts, or any portion thereof, involved in the controversy, which stipulation shall be recorded and used as evidence on the hearing. It is desired that the facts be thus agreed upon whenever practicable.

Hearings.

8. Upon the filing of the answer, the hearing will proceed at once, or the Commission will assign the time and place for the same. Witnesses will be examined orally before the Commission, unless testimony or facts are agreed upon, as otherwise provided in these rules. The petitioner or complainant must prove the existence of the facts complained of, unless they are admitted, or the defendants be in default by failing to answer. Facts alleged in the answer must be proved by the defendant or defendants, unless admitted by complainant. In cases of failure to answer, the Commission will take such proof of the charge as may be deemed reasonable and proper, and make such order thereon as the circumstances of the case may require.

167 ### Depositions and Witnesses.

9. The testimony of any witness may be taken by deposition, at the instance of a party, in any proceeding or investigation before the Commission after the same is at issue by the filing of the answer. Such depositions must be after notice, and before the officer required and allowed by the statutes of Virginia. Any party, complainant or defendant shall be entitled to process to compel the attendance of witnesses or the production of books and papers before the Commission. Such process will be issued, for proper service and return by the clerk of the Commission, upon application of any party to the proceeding. When depositions are taken they must be returned to the Clerk of the Commission, as depositions are required by law to be returned to the Clerk of a court of chancery.

Argument.

10. Whenever requested by the proper authorities, the Attorney-General of the State may represent the complainant in any proceeding.

Arguments may be made orally before the Commission or written or printed briefs may be filed in any case within such time as may be prescribed by the Commission in such case. For convenience in reading and filing, it is requested that, whenever practicable, in cases of importance, arguments be printed.

Special Matters.

11. In the performance of special functions of a judicial nature, imposed upon it directly by law, and not instituted by any complaint such as the assessment of property of corporations and other like matters, such notices will be given and proceedings be had, as are required by the statutes under which the Commission acts in the performance of such duties.

168 General Business.

12. The offices of the Commission, on the fourth floor of the City Hall of Richmond, will be open for the transaction of business on week days from 9 A. M. to 6 P. M. When the Commission is not in session, applications for charters and all papers to be presented to the Commission, or filed in its offices, may be left with the Clerk. Official communications by mail should be addressed to the "State Corporation Commission," and not to the Chairman or any member of the Commission individually.

COMMONWEALTH OF VIRGINIA:

Department of the State Corporation Commission.

CITY OF RICHMOND, *8th of January*, 1906.

The books, papers and records of the State Corporation Commission having been removed from the quarters heretofore occupied by it in the City Hall of the City of Richmond to the rooms assigned to it for the use of the members and the clerical force of the Commission, including a room assigned to it for use as a hearing or court-room, all in the restored Capitol Building of the State; and the Commission being now in occupancy and possession of the said rooms and said court-room in the Capitol Building;

It is ordered, That the same be and remain its permanent quarters and hearing or court-room until other provision is made by law.

VIRGINIA, *City of Richmond, To wit:*

We, R. R. Prentis and R. T. Wilson, chairman, and clerk, respectively, of the State Corporation Commission of Virginia, do hereby certify that the foregoing is a full, complete and true copy of the rules of practice and produce before the said Commission:

169 that the said rules, &c., were prescribed and entered of record as above set forth; that, as is above shown, section 12 of said

rules, &c., was, in one respect, amended by the foregoing order of January 8th, 1906; and that, with the exception of said section 12, all of the foregoing rules, &c., are now in full force and effect, and have been so continuously since the 6th day of October, 1903.

In testimony whereof, we have hereunto set our hands and affixed the seal of the said State Corporation Commission, this, the 25th day of June, 1907.

[Seal of the State Corporation Commission of Virginia.]

ROBERT R. PRENTIS, *Chairman.*
R. T. WILSON, *Clerk.*

This day, R. T. Wilson, clerk of the State Corporation Commission of Virginia, to me personally known, appeared in person before me, the undersigned, a notary public in and for the City of Richmond, in the State of Virginia, and, before me, in my said city, subscribed and made oath to the foregoing certificate.

In testimony whereof, I have hereunto set my hand and affixed my official seal this, the 25th day of June, 1907.

[NOTARIAL SEAL.]

JNO. S. EGGLESTON,
Notary Public.

170 DEFENDANTS' EXHIBIT No. 4.

STATE OF VIRGINIA, *City of Richmond, To-wit:*

This day, R. T. Wilson, to me personally known, appeared in person before me, the undersigned, a notary public in and for the city aforesaid, in the State of Virginia, and made oath before me, in my said city as follows:

That he is now, and has been continuously since the 31st day of July, 1906, the clerk of the State Corporation Commission of Virginia.

That, between the 31st day of October, 1906, and the 27th day of April, 1907, the said Commission was engaged a great number of days, in receiving testimony, hearing argument, and otherwise considering, the matters and things involved in and connected with the proceeding before said Commission, which may be called the "Passenger Rate Proceeding," and in which the said Commission, on the 27th day of April, 1907, entered its order prescribing the maximum passenger rates to be charged by the several railroad companies mentioned in said order.

That all of the railroad companies mentioned in said order appeared before the said Commission during the course of said proceeding, filed answers in the same, on the 1st day of November, 1906, produced witnesses before said Commission, introduced much documentary evidence, and made elaborate defences therein.

That the oral testimony adduced before said Commission by all of the railroad companies appearing in said proceeding was taken down by stenographers, and thereafter reduced to writing, and such

testimony, together with the documentary evidence also introduced in said proceeding, and the evidence in the "Freight Rate Proceeding," next hereinafter referred to, covers several thousand pages.

That, prior to the said 27th day of April, 1907, the said Commission had devoted several months to the hearing of evidence
171 and argument in a proceeding before it, the object of which was to enter an order relating to *freight* charges to be made by the railroad companies which were parties to that proceeding, which may be called the "Freight Rate Proceeding"; that the *Southern Railway Company, Chesapeake & Ohio Railway Co., Norfolk & Western Railway Co., Atlantic Coast Line Railroad Co.*, and *Louisville & Nashville Railroad Co.*, were all parties to said "Freight Rate Proceeding," and not only filed answers, but introduced much testimony therein; that the oral testimony adduced before said Commission by all of the railroad companies appearing in said "Freight Rate Proceeding" was taken down by stenographers, and thereafter reduced to writing, and such testimony, together with the documentary evidence also introduced in said proceeding, covers several thousand pages; that the said evidence in said "Freight Rate Proceeding" was made a part of the evidence in said "Passenger Rate Proceeding," and that all of the evidence referred to in this affidavit is now in the possession and custody of the said affiant, in his capacity as clerk of the said Commission, and is preserved by him to be made a part of the record of said "Passenger Rate Proceeding" when so ordered by said Commission, in case of appeal in said proceeding.

That the signature next hereunto affixed is the signature of the said affiant.

R. T. WILSON.

In testimony whereof, I, the aforesaid notary public, have hereunto subscribed my signature, and affixed my notarial seal, this the 25th day of June, 1907.

[NOTARIAL SEAL.] JNO. S. EGGLESTON,
Notary Public.

172 DEFENDANTS' EXHIBIT NO. 5.

VIRGINIA:

Pleas before the State Corporation Commission at its court-room in the City of Richmond, Virginia, on the 27th day of April, 1907.

Judicial Case 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

Be it remembered, that heretofore, to-wit: on Tuesday, the 31st day of July, 1906, the following notice and order was entered:

Offices of the State Corporation Commission.

RICHMOND, VA., *31st Day of July*, 1906.

To the Several Steam Railroad Companies doing business in Virginia, and all persons interested:

Take notice, that the State Corporation Commission will, in the City of Richmond, on Thursday the first day of November, 1906, at 12:00 o'clock noon, in accordance with authority conferred by the Constitution of Virginia, and the statutes enacted by the General Assembly of Virginia pursuant thereto, hear and consider any objections which may be urged against a rule, regulation, order, or requirement of the Commission, fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers over the line of any railroad company in this State, operated by steam, between points within the State of Virginia, said maximum rate to be observed whether the transportation be entirely over the line of one railroad company, or joint transportation over the lines of two or more companies; and whether the contract for transportation of a passenger or passengers be evidenced by an ordinary
173 ticket between stations, by a mileage book, or otherwise; the Commission to have, as authorized by law, the power and authority from time to time, and as often as circumstances may require, to change or revise the rate, or by rules, regulations and requirements to provide for the more convenient and expedient putting into effect and proper observance of said maximum rate. At the said hearing and consideration of the said maximum rate of two cents per mile, the method, time and extent of promulgating and putting into effect the same, will be heard and determined by the Commission, to the end that a maximum rate for passenger transportation may be put into effect and be made applicable to all steam railroad companies doing business in Virginia, and be properly observed by them in the transportation of passengers.

BEVERLEY T. CRUMP, *Chairman;*
H. C. STUART,
JOS. E. WILLARD,
Commissioners.

And at another day, towit: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Thursday, November 1st, 1906, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION

v.

STEAM RAILROAD COMPANIES.

NOVEMBER 1ST, 1906.

In the Matter of Prescribing a Maximum Passenger Rate.

The notice in this proceeding, addressed to the several steam railroad companies doing business in Virginia and all persons interested,

having been regularly published as prescribed by law once a week for four successive weeks in the Times-Dispatch, a daily news-
174 paper published in the City of Richmond, this matter came before the Commission for hearing on this day. Several of the railroad companies doing business in Virginia appeared before the Commission, by counsel, and answers were filed on behalf of the Atlantic Coast Line Railroad Company, the Norfolk & Western Railway Company, The Chesapeake and Ohio Railway Company, Seaboard Air Line Railway, Virginia and Southwestern Railway Company, Chesapeake Western Railway Company, the Valley Railroad Company and the Baltimore and Ohio Railroad Company operating the Winchester and Strasburg and the Winchester and Potomac Railroad, the Southern Railway Company, Richmond, Fredericksburg & Potomac Railroad Company, Washington-Southern Railway Company, and the Virginia and Kentucky Railway Company, and leave was granted to any of the other railroads to file answers herein before the taking of testimony was commenced. Thereupon, the hearing and investigation of the matters involved in this proceeding were continued to Tuesday, th- 4th day of December, 1906, at 11:00 o'clock in the morning.

And at another day, to-wit: At a session of the State Corporation Commission, continued by adjournment at the court-room aforesaid on Tuesday, December 4th, 1906, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION

v.

STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *December 4th*, 1906.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered in this proceeding on the first day of November, the matter herein involved came on this day to be heard. Thereupon, the hearing and investigation was con-
175 tinued to Tuesday, the 11th day of December, 1906, at 11:00 o'clock in the morning.

And at another day, to-wit: At a session of the State Corporation Commission, continued by adjournment at the court-room aforesaid on Monday, December 10th, 1906, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *December 10th*, 1906.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered in this proceeding on the 4th day of December, 1906, the matters herein involved came on this day to be heard. Thereupon, the hearing and investigation was continued to Wednesday the 19th day of December, 1906, at 11 o'clock in the morning.

And at another day, to-wit: At a session of the State Corporation Commission, continued by adjournment at the courtroom aforesaid on Wednesday, December 19th, 1906, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *December 19th*, 1906.

In the Matter of Prescribing a Maximum Passenger Rate.

176 Pursuant to the order entered in this proceeding on the 11th day of December, 1906, the matters herein involved, came on this day to be heard. Thereupon the hearing and investigation was continued to Wednesday the 16th day of January, 1907, at 11 o'clock in the morning.

And at another day, to-wot: At a session of the State Corporation Commission continued by adjournment at the courtroom aforesaid on Wednesday, January 16th, 1907, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *16th Day of Jan'y*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered in this proceeding on the 19th day of December, 1906, the matters herein involved came on this day to be heard. Thereupon by leave of the Commission, the Norfolk and Southern Railway Company, the Louisville and Nashville R. R. Co. and the New York, Philadelphia and Norfolk R. R. Co. filed their respective answers in writing before the Commission. Thereupon the hearing and investigation in this proceeding was continued to Tuesday the 22nd day of Jan'y, 1907, at 11 o'clock in the morning.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the courtroom aforesaid on Tuesday, January 22nd, 1907, the following order was entered:

177 No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *22nd Day of Jan'y*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to order entered in these proceedings on the 16th day of January, 1907, the parties again appeared before the Commission on this day and the taking of testimony herein was commenced, testimony being first adduced by the Chesapeake and Ohio Ry. Co.; and not being concluded on this day was adjourned over for further hearing until to-morrow and ordered to be continued from day to day or from time to time until concluded.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the courtroom aforesaid on Monday, January 28th, 1907, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *28th Day of Jan'y*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered in these proceedings on the 22nd day of January, 1907, these proceedings were heard and
178 testimony was taken before the Commission bearing upon the matters at issue herein, by the Chesapeake and Ohio Railway Company and the Norfolk and Western Ry. Co. at public sessions of the Commission held for that purpose on the 23rd, 24th, 25th, of January, 1907, and this day, and testimony not having been concluded at the adjournment of this day, the further taking of testimony and the hearing of all matters involved in this proceeding was continued until Wednesday, January 30th, 1907, at 11:00 o'clock in the morning.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Wednesday, January 30th, 1907, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *January* 30, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered in these proceedings on January 28th, 1907, the hearing of the matters at issue herein was resumed on this day. The Seaboard Air Line Railway Company appeared to-day before the Commission and presented testimony on its behalf bearing upon the matter involved in this proceeding. The testimony of said railroad company having been fully heard, the further hearing of this matter and the taking of testimony herein was continued until Tuesday, the 5th day of February, 1907, at 11 o'clock in the morning.

179 And at another day to-wit: At a session of the State Corporation Commission continued by adjournment at the courtroom aforesaid on Tuesday, February 5th, 1907, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *February* 5, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered in these proceedings on the 30th day of January, these proceedings came on to be heard again this day and the further hearing and taking of testimony was continued until to-morrow the 6th day of February at 11:00 o'clock in the morning.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Wednesday, February 6th, 1907, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *February* 6, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

180 Pursuant to the order entered on yesterday these proceedings were further heard on this day and testimony was taken before the Commission bearing upon the matters at issue herein, testimony being adduced by the Southern Railway Company, and not having been concluded at the adjournment on this day, the taking of the same and the hearing of all matters involved herein was continued to-day until to-morrow at 11 o'clock in the morning and further ordered to be continued from day to day or from time to time until the further order of the Commission.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the courtroom on Tuesday, February 12th, 1907, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *February 12th*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered in these proceedings on the 6th day of February, 1907, the further hearing and taking of testimony herein not being concluded on that day was continued at a public session of the Commission held for that purpose on the 8th day of February, the 11th day of February and this day, testimony being heard on behalf of the Southern Railway Company, the Washington-Southern Railway Company and the Virginia and Southwestern Railway Company. The taking of testimony and the hear-
181 ing of the matters involved in these proceedings not being concluded on this day, these proceedings are continued until Tuesday, Feb'y 26th, 1907, at 11 o'clock in the morning.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the courtroom aforesaid on Friday, March 1st, 1907, the following order was entered:

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *1st Day of March*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered herein on the 12th day of February, 1907, the hearing and taking of testimony in this proceeding was resumed on the 26th day of February, 1907, and not being completed on that day was further continued and testimony taken on the 27th day of February and on the 1st day of March and the testimony on behalf of the railway companies which desired to be heard in this proceeding having been completed, the hearing and further taking of testimony herein on the part of the Commonwealth or of any defendant railway companies which may further desire to be heard was continued to a day to be fixed by the Commission of which the parties of record were to be notified.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the courtroom aforesaid on Wednesday, March 27th, 1907, the following order was entered:

182 No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION

v.

STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *March 27th*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Counsel of record having been notified that the hearing and consideration of these proceedings would be resumed on this date the parties appeared again before the Commission and further testimony was taken herein. The hearing not being completed on this day, was adjourned and continued until to-morrow morning at 11 o'clock.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the courtroom aforesaid on Thursday, March 28th, 1907, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION

v.

STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *March 28th*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

In these proceedings the parties, by counsel, again appeared before the Commission on this day and the further consideration of the matters involved herein was resumed. The testimony was fully completed on behalf of all railroad companies making objections
183 herein and also on behalf of the Commonwealth and all matters at issue on this hearing and in this proceeding were submitted to the Commission for its consideration and decision and for the entry of such rule, regulation, order or requirement as may be deemed just, reasonable and valid herein. The Commission not yet being advised of such proper order, rule, regulation or requirement time is taken to consider thereof.

No. 99.

And at this day, to-wit: At a session of the State Corporation Commission, continued by adjournment at the courtroom aforesaid, the following judgment and order was entered:

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION

v.

STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *27th of April*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

The State Corporation Commission having carefully considered all the proceedings herein, and all the testimony, exhibits and statements adduced and filed before it in this proceeding, and having put its conclusions in writing, which are made a part of the record herein, the Commission, in order to carry out its said conclusions, now makes the following order and regulations and prescribes the following maximum rates to be observed by all the steam railroad companies operating in the State of Virginia, in the transportation of passengers:

1. It is ordered, that on and after the first day of July, 1907, the following steam railroad companies, viz:

Norfolk and Western Railway Company,
184 Chesapeake and Ohio Railway Company,
Atlantic Coast Line Railway Company,
Seaboard Air Line Railway Company,
Southern Railway Company,
Richmond, Fredericksburg and Potomac Railroad Company,
Washington-Southern Railway Company,
New York, Philadelphia and Norfolk Railroad Company,
Virginia and Southwestern Railway Company,
Louisville and Nashville Railroad Company

shall put into effect and observe a maximum rate of two cents per mile in the intra-state transportation of passengers in Virginia, said maximum rate to be observed whether the transportation be entirely over the line of one of the said railroad companies, or joint transportation over the lines of two or more companies; and on and after the said date it shall be unlawful for the said railroad companies, or any of them, to charge or collect a greater sum than two cents per mile for the transportation of passengers over the lines controlled and operated by them, respectively, except as otherwise allowed in this order, or from time to time, by the State Corporation Commission.

2. It is ordered, that a maximum rate of two and one-half cents per mile for the intra-state transportation of passengers be fixed and prescribed to go into effect on and after the first day of July, 1907, on the following divisions or branches, of the Southern Railway Company, which are now excepted from the operation of the maximum rate of two cents per mile hereinabove fixed.

Norfolk Division, extending form Pinner's Point to Danville, 204 miles, exclusive of so much of the said division as may be in the State of North Carolina;

Franklin Branch, extending from Franklin Junction to Rocky Mount, 37 miles;

Claremont Branch, extending from James River Junction to Claremont, 50 miles.

185 From and after the said date it shall be unlawful for the Southern Railway Company to charge or collect a greater sum than two and one-half cents per mile for the intra-state transportation of passengers over these divisions, or branches, unless otherwise directed, or allowed by the Commission.

3. It is ordered, that on and after the first day of July, 1907, the following steam railroad companies, viz.:

Chesapeake-Western Railway.
Cumberland Valley and Martinsburg Railroad Company.
Danville and Western Railway Company.
Indian Creek and Pound River Railroad Company.
Marion and Rye Valley Railway Company.
Nelson and Albemarle Railway Company.
Valley Railroad Company of Virginia.
Virginia-Carolina Railway Company.
Virginia Southern Railroad Company.
Winchester and Potomac Railroad Company.
Winchester and Strasburg Railroad Company.
Norfolk and Southern Railway Company.

shall put into effect and observe a maximum rate of three cents per mile in the intra-state transportation of passengers in Virginia, and on and after the said date it shall be unlawful for the said railroad companies, or any of them, to charge or collect a greater sum than three cents per mile for the transportation of passengers over the lines controlled and operated by them, respectively, except as otherwise allowed from time to time by the State Corporation Commission.

4. It is ordered, that on and after the first day of July, 1907, the following steam railroad companies, viz.:

Big Sandy and Cumberland Railroad Company.
Black Mountain Railroad Company.
Interstate Railroad Company.
Lick Creek and Lake Erie Railroad Company.
Mt. Airy and Eastern Railway Company.
New River, Holston and Western Railroad Company.
Potomac, Frederick-sburg and Piedmont Railroad Company.

186 Surry, Sussex and Southampton Railway Company.
Tidewater and Western Railroad Company.
Virginia Anthracite Coal and Railway Company.
Virginia and Kentucky Railway Company.
Wise Terminal Company.

shall put into effect and observe a maximum rate of three and one-half cents per mile in the intra-state transportation of passengers in Virginia and on and after the said date it shall be unlawful for the said railroad companies, or any of them, to charge or collect a greater sum than three and one-half cents per mile for the transpor-

tation of passengers over the lines controlled and operated by them, respectively, except as otherwise allowed from time to time by the State Corporation Commission.

5. It is further ordered, that in applying the foregoing maximum passenger rates prescribed for the several railroads in Virginia, the railroad companies may charge and collect a minimum rate of ten cents per passenger for any single haul.

6. The payment of fares subject to the maximum rate herein prescribed shall entitle the passenger to the same transportation of baggage as now allowed by the carriers under, and in connection with the present rates and no steam railroad company operating in Virginia shall change or alter the rules governing the rights of passengers with respect to the transportation of baggage in Virginia, without the consent of the Commission first obtained.

7. Steam railroad companies operating in Virginia may charge and collect in addition to regular ticket rates the fixed sum of ten cents from all cash fare passengers who had been afforded reasonable opportunity for purchasing ticket before boarding train: provided that the conductor shall in all such cases deliver to passengers a receipt for the amount collected, redeemable at any ticket office of the company within thirty days from date of issue.

It is ordered, that the clerk of the Commission do forth-
187 with publish this order in full in one of the newspapers of general circulation published in the City of Richmond, once a week for four consecutive weeks, as required by law.

STATE OF VIRGINIA,
City of Richmond, To-wit:

I, Richard T. Wilson, clerk of the State Corporation Commission, do hereby certify that the foregoing is a true transcript from the judicial order book of the State Corporation Commission, of all orders entered in that certain proceeding lately depending before the said Commission under the name and style of:

Commonwealth of Virginia, at the relation of the State Corporation Commission,

v.

Steam Railroad Companies,

and designated in this office as judicial record 99.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the State Corporation Commission this 25th day of June, 1907. R. T. WILSON, *Clerk.*

[Seal of the State Corporation Commission of Virginia.]

188 This day, R. T. Wilson, clerk of the State Corporation Commission of Virginia, to me personally known, appeared in person before me, the undersigned, a notary public in and for the City of Richmond, in the State of Virginia, and, before me, in my said city, subscribed and made oath to the foregoing certificate.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal this, the 25th day of June, 1907.

[NOTARIAL SEAL.] JNO. S. EGGLESTON,
Notary Public.

189 *Opinion Referred to in Foregoing Order.*

Passenger Rate Case.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
vs.
STEAM RAILROAD COMPANIES.

In the Matter of Fixing a Maximum Passenger Rate.

Conclusions of the Commission.

Relative to the proceedings to be observed by the State Corporation Commission before it passes upon the reasonableness of any rate which it proposes to put into effect, it is provided in section 156*b* of the Constitution of Virginia, as follows:

tion Commission before it passes upon the reasonableness of any rate which it proposes to put into effect, it is provided in section 156b of the Constitution of Virginia, as follows:

"Before the commission shall prescribe or fix any rate, charge or classification of traffic, and before it shall make any order, rule, regulation or requirement directed against any one or more companies by name, the company, or companies to be affected by such rate, charge, classification, order, rule, regulation or requirement shall first be given, by the commission, at least ten days' notice of the time and place, when and where the contemplated action in the premises will be considered and disposed of, and shall be afforded a reasonable opportunity to introduce evidence and to be heard thereon, to the end that justice may be done, and shall have
190 process to enforce the attendance of witnesses; and before the commission shall make or prescribe any general order, rule, regulation or requirement, not directed against any specific company or companies by name, the contemplated general order, rule, regulation or requirement shall first be published in substance, not less than once a week for four consecutive weeks in one or more of the newspapers of general circulation published in the city of Richmond, Virginia, together with notice of the time and place, when and where the commission will hear any objections which may be urged by any person interested, against the proposed order, rule, regulation or requirement; and every such general order, rule, regulation or requirement, made by the commission shall be published at length, for the time and in the manner above specified, before it shall go into effect, and shall also as long as it remains in force, be published in each subsequent annual report of the commission."

Proceeding in conformity with the foregoing provision of the organic law of the State, the commission, on the 31st day of July, 1906, issued the following notice:

Notice.

Offices of the State Corporation Commission.

RICHMOND, VA., *31st Day of July*, 1906.

To the several steam railroad companies doing business in Virginia, and all persons interested:

Take notice that the State Corporation Commission will, in the city of Richmond, on Thursday, the first day of November, 1906, at 12 o'clock noon, in accordance with authority conferred by the Constitution of Virginia and the statutes enacted by the General Assembly of Virginia pursuant thereto, hear and consider any objections which may be urged against a rule, regulation, order
191 or requirement of the commission fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers over the line of any railroad company in this State, operated by steam, between points within the State of Virginia, said maximum rate to be observed whether the transportation be entirely over the line of one railroad company, or joint transportation over the lines of two or more companies; and whether the contract for transportation of a passenger, or passengers be evidenced by an ordinary ticket between stations, by a mileage book, or otherwise; the commission to have, as authorized by law, the power and authority, from time to time, and as often as circumstances may require, to change or revise the rate, or by rules, regulations and requirements to provide for the more convenient and expedient putting into effect and proper observance of said maximum rate. At the said hearing and consideration of the said maximum rate of two cents per mile, the method, time and extent of promulgating and putting into effect of the same will be heard and determined by the commission, to the end that a maximum rate for passenger transportation may be put into effect and be made applicable to all steam railroad companies doing business in Virginia, and be properly observed by them in the transportation of passengers.

BEVERLEY T. CRUMP, *Chairman*,
H. C. STUART,
JOSEPH E. WILLARD,
Commissioners.

This notice was published once a week for four consecutive weeks in *The Times-Dispatch*, a newspaper of general circulation published in the city of Richmond.

In accordance with the foregoing notice, the leading railroad companies doing business in the State of Virginia appeared be-
192 fore the commission on the first day of November, 1906, and filed written, or printed, answers, in which were set out in

detail the objections which they desired to urge against the proposed maximum passenger rate of two cents per mile. Following upon the filing of these answers, testimony was introduced before the commission from time to time, and all the issues arising in these proceedings were finally submitted to the commission for its determination on the 29th day of March, 1907.

The commission has given careful consideration to the objections made by the railroad companies involving solely questions of law, and to the most voluminous and detailed testimony adduced before it.

We have first to deal with two preliminary questions of law which are urged by the defendant railroad companies in their answers, and which must be first disposed of, as they challenge the right of the commission to take any action in this proceeding.

It is contended, in the first place, that the provisions of article XII of the Constitution of Virginia, providing for the creation, functions, duties and powers of the State Corporation Commission, are in violation of the fourteenth amendment to the Constitution of the United States, in that those provisions of the Constitution of Virginia, in their execution, deprive the defendant railroad companies of their properties without due process of law, and deny to them the equal protection of the laws. It is contended, in the next place, that as to all the defendant railroad companies whose charters were granted by the State of Virginia prior to the adoption of the new Constitution in July, 1902, there existed a contract between the State and the said railroad companies whereby it was agreed that the State would not undertake to prescribe the tolls or charges upon the said railroad companies, and that the provisions of the Constitution and laws of the State of Virginia conferring upon the State Corporation Commission power to prescribe rates impaired the obligation of that contract, and that hence the commission has no power to fix or prescribe a maximum passenger rate in this proceeding.

193 The first objection above mentioned is based upon the fact that the Constitution of the State, in creating the State Corporation Commission, has conferred upon it judicial, executive and legislative powers; that the commission has authority to consider, prescribe and put into effect rates to be charged by the railroads, and has likewise power, as a judicial tribunal, to pass upon the reasonableness of the rates so proposed by it. The position is taken that a tribunal thus created is unlike the regular courts to which other persons in the State may submit their controversies, and that, in being required to come before such a tribunal, they are denied due process of law, and likewise equal protection of the laws.

It is unnecessary for the commission to consider this objection at length, as it has been recently passed upon by the Supreme Court of Appeals of Virginia. In the case of *Winchester and Strasburg R. R. Co. vs. Town of Strasburg*, decided by the Supreme Court of Appeals of Virginia on December 6, 1906, on appeal from the commission, this question was discussed at length by the court, and the provisions of the Constitution were upheld as valid, and not in violation of the fourteenth amendment to the Constitution of the United States, al-

though the commission had clearly conferred upon it, to a certain extent, judicial functions as well as legislative and administrative authority.

The second objection urged by the defendant railroad companies as a matter of law is based upon certain provisions of the statutory law of Virginia, which have been in effect for many years, and which are now contained in sections 1202, 1240 and 1242 of the Code of Virginia of 1887. These sections of the Code are portions of the general railroad law of the State. It is provided in section 1240 that the charter of every company, which is governed by an act passed in March, 1837, prescribing certain general regulations for the incorporation of railroad companies, and the charter of every company theretofore or thereafter incorporated, which shall be governed by that chapter, "may be altered, modified, or repealed by any future legislature as may seem to it proper, except that no law
194 shall be passed for taking from a company its work or property without making to it just compensation, or for changing its tolls without its assent, in any other cases than such as are specially provided for in this chapter." In section 1242 it is provided that laws may be passed reducing the tolls of a railroad company when its net profits shall be such that dividends might be declared out of such net profits exceeding the rate of fifteen per centum per annum on the capital stock invested; but that no law shall reduce the tolls so as to prevent dividends at fifteen per centum per annum within thirty years from the time when the first dividends of profits were declared, or so as to prevent dividends of twelve per centum after the said thirty years, and before fifty years from the same time, or so as to prevent dividends of ten per centum per annum after the said fifty years.

It is alleged in the several answers that the railroad companies have not at any time earned such net profits as would enable them to declare the respective dividends mentioned in this statute. It is insisted that therefore, the State has contracted with the railroad companies that no laws should be passed changing their tolls or charges without their assent until such dividends as are contemplated by the statute have been earned. The question before the commission, therefore, is whether such a contract exists, and whether the present provisions of the Constitution of Virginia and the statutes enacted in pursuance thereof constitute an impairment of the obligation of that contract.

We do not deem it necessary to discuss this question at length, but content ourselves with referring to a recent case decided by the Circuit Court of the United States for the Western District of Texas. See *Houston and T. C. R. R. Co. vs. Storey*, 149 Fed. Rep. 499. In that case a bill was filed by the railroad companies to enjoin the enforcement of rates established by the Railroad Commission of Texas. The railroad companies alleged that there existed a contract between them and the State of Texas which precluded the State and
195 the railroad commission from prescribing the rates in question. The section of the Texas statutes relied upon was as follows:

"It shall be lawful for the legislature at any time to prescribe the rates to be charged for the transportation of persons and property upon any such road, should they be deemed too high, and may exercise the same power every ten years: provided, that no reduction shall be made unless the net profit of the company for the previous ten years, the expenditures of the company being *bona fide* and not with a view to defeat the operation of this section, shall amount to a sum equal to twelve per centum per annum upon its capital stock, and then so as not to reduce the future probable profits below said per centum."

The question of the existence of this contract arose upon a demurrer to the bill, and is not discussed at length by the court. The court refers to *L. & N. R. R. Co. vs. Kentucky*, 183 U. S. 503; *San Antonio Traction Company vs. Altgeld*, 200 U. S. 304, and *Chicago, &c., R. R. Co. vs. Minnesota*, 134 U. S. 455, and holds, upon the authority of these cases, that there was nothing in the charter of any of the companies which expressly or by implication exempted them from liability to future legislation as to the prescribing of rates, and hence no contract between the State and the railroads, respectively, arose; that all the companies, whether chartered by special act of the legislature or under the general laws of the State, took their charters subject to the general law, and to such changes as might be made in the general law, and subject to future constitutional provisions and future general legislation.

In *Louisville and Nashville R. R. Co. vs. Kentucky*, one of the cases relied upon by the Circuit Court, the Supreme Court of the United States says:

"In the absence, then, of any express prior contract between the State and the company exempting the latter from future con-
196 stitutional enactments, and without conceding that even such a contract would avail to relieve the company from constitutional changes in the exercise of the general police power of the State, it is sufficient to say that we do not find in section 218 of the Constitution of Kentucky any impairment of an existing contract between the State and the plaintiff in error."

It will be seen, therefore, that the Supreme Court of the United States does not concede the validity of a contract of this character between the State and a railroad company. This is based upon the general principle that one legislature cannot make such a contract as will prevent subsequent legislatures, or a constitutional convention from the exercise of the police power. This is a question of great importance and interest which it is unnecessary for us to allude to further than to say that, in the present state of the law, this commission must necessarily uphold the right of the State of Virginia to exercise unfettered the police power inherently residing in the State government. An examination of the charters of the several railroad companies which have appeared in this proceeding leads the commission to the conclusion that there is no language in any of them by which a contract, either expressly or impliedly, could be held to have been made with the State whereby the State had relinquished its governmental power to fix and prescribe reasonable

rates to be charged by the railroads, with the possible exception of the charter of the Richmond, Fredericksburg and Potomac Railroad Company. The charter of this company is a very old charter, and it has been held by our State court that, under this charter, the property of the railroad company is exempt from taxation. The power of taxation, however, and the right of the government to prescribe rates rest upon different principles.

The commission overrules the objection that the rate-making power as exercised by the commission in this proceeding constitutes an impairment of the obligation of a contract between the State and the railroad companies as to the Richmond, Fredericksburg and Potomac Railroad Company.

197 It is also to be observed that the charters of some of the defendant railroad companies fall within the scope of the decision of the Supreme Court of the United States in *Norfolk and Western Railroad Company vs. Pendleton*, 156 U. S. 667.

The further objection is made that the adoption and promulgation of the proposed maximum passenger rate would, because many interstate passenger rates are made, and necessarily made, on combinations of locals, or by use of the local rate as a factor, necessarily disturb and regulate the interstate commerce of railroads to such an extent as to come within the purview of the clause of the Federal Constitution relative to interstate commerce. The commission is of the opinion that this objection is clearly untenable.

The defendant railroad companies maintain that a maximum passenger rate of two cents per mile in Virginia would be unreasonable, or confiscatory. It has been strongly contended before the commission, as to each of the railroads involved, that a lowering of the maximum passenger rate in effect upon each of those roads would so affect their earnings as to make the lower maximum passenger rate unreasonable and unjust.

At the same time that the commission has been considering the question of a maximum passenger rate, it has also had before it proceedings having for their object the promulgation and putting into effect of an uniform Virginia freight classification, and freight tariffs thereunder. These two proceedings are designated, respectively, as the passenger rate case and the freight rate case. The freight rate case was taken up first, and by agreement any of the testimony adduced before the commission in that proceeding may be regarded also as testimony in the passenger rate case. So that in passing upon this matter of a maximum passenger rate, the commission will consider the records in both cases and all testimony, exhibits, facts and statements contained in both records, so far as pertinent.

The testimony taken before the commission as to the organization, the financial conditions, the earnings, and the present and future economic conditions of each of the roads appearing before the commission, has been most voluminous, and the commission

198 cannot undertake to analyze and tabulate the testimony in detail. The commission desires, however, before referring to the evidence, to examine briefly the underlying principles, so far as

they have been settled, by which the reasonableness or confiscatory character of a rate is to be judged.

By the Constitution and laws of Virginia, the State Corporation Commission is vested with the legislative authority to make a rate. It is settled by statute and by adjudication that the commission has the right, and is constrained by the provisions of our Constitution, to pass upon the judicial question of whether or not the rate proposed by it is reasonable. Under the terms of the Constitution of Virginia, full provision is made for notice to the railroad companies, and every opportunity is given to test before the commission the question of the reasonableness of the proposed rate. There can be no question but that due process of law is afforded to the railroad companies under the procedure by which the State Corporation Commission is bound, and, therefore, the objection sustained in *Chicago, Milwaukee and St. Paul Railroad Company vs. Minnesota*, 134 U. S., 418, does not apply to the method of this commission in prescribing and putting into effect a rate. This commission is required, sitting as a court, to pass upon the judicial question of whether or not the rate proposed by it is reasonable, and from its judgment on that question an appeal is given from it, as a judicial tribunal, to the Supreme Court of Appeals of the State. We are required, therefore, to determine whether or not a maximum passenger rate of two cents per mile in Virginia, in the intra-state business of the railroads doing business in the State, is reasonable, and if not, what maximum passenger rate is reasonable as to all of the roads, or as to the roads placed in several different classes. We must endeavor to determine briefly what are the principles by which the reasonableness of a rate is to be judged, and what the term reasonableness, applied to rates, means as a judicial question.

As we shall see, it is somewhat of a misconception to speak of the rate itself as being reasonable, because the reasonableness of
199 the rate depends in the end upon whether or not the rate is so unreasonably low as to constitute a violation of the rights secured to the railroad by the fourteenth amendment to the Constitution of the United States.

Reduced to its proper analysis, the defense of the railroad companies rests upon their allegation that the maximum rate proposed in this proceeding would so reduce their earnings as to deprive them of a reasonable income from their property without just compensation, and that to so deprive them of a reasonable income without compensation is to deprive them of due process of law within the extended meaning of that term as used in the fourteenth amendment; and that they are denied the equal protection of the laws because they are deprived of a reasonable income from their property without compensation, while other persons receive compensation for property appropriated by the State. The argument is that, to deprive the railroad of a reasonable income from its property, is the same as taking property itself, and this would seem to be true. An unreasonable rate is such a rate as is calculated to reduce the railroad earnings below the point of reasonableness. The term reasonableness, therefore, in the end, applies rather to the earnings of the railroad than to the rate itself. Understood as above stated, it is very

common and natural to speak of the rate itself as being reasonable or unreasonable, and is a short method of stating the question as to whether or not the rate will unreasonably reduce the earnings of the railroad company.

What are the general considerations by which the commission should be guided in determining, from the facts before it, whether or not a maximum passenger rate of two cents per mile will unreasonably reduce the earnings of the railroads and so take their property without just compensation, and deny them the equal protection of the laws?

It is impossible to answer this question briefly, and it is equally impossible to answer it clearly and completely. Being a question arising under the Constitution of the United States, the decisions of the Supreme Court of the United States should be looked to
200 as controlling. Quite a large number of cases have now been decided by that supreme tribunal of the country bearing upon the reasonableness or confiscatory nature of rates prescribed by State legislatures, or by State commissions. A rate which is unreasonable is often termed to be confiscatory, because, if it takes the property of the railroad without compensation, it is in the nature of confiscation. While the doctrines which should control and guide a judicial tribunal in passing upon the question as to whether a proposed rate will reduce the earnings of a railroad unreasonably cannot be said to have been clearly enunciated and well settled, yet the Supreme Court of the United States has, in several cases, been called upon to deal directly with these doctrines. Without referring to all of the cases which have been before that tribunal, we think it may be said that the following are the leading cases in the sense that they mark the several *stadia* in the development of these doctrines:

Chicago, Milwaukee and St. Paul Railroad vs. Minnesota, 134 U. S. 418; *Reagan vs. Farmers' Loan and Trust Company*, 154 U. S. 362; *Covington and Lexington Turnpike Road Company vs. Sanford*, 164 U. S. 578; *Smyth vs. Ames*, 169 U. S. 466; *San Diego Land and Town Company vs. National City*, 174 U. S. 739; *Minneapolis and St. Louis Railway Company vs. Minnesota*, 186 U. S. 257.

These cases refer to the intermediate decisions in such a way as to give a very fair presentation of the progress of the court-made law, and of the present condition of the doctrines enunciated by the court on these subjects.

From the cases we deduce the following general principles:

1. The rate enacted by the legislature, or otherwise proposed by the State, stands, as other legislation or action of a State, as valid and constitutional, and hence the burden is upon the railroad company of showing that the rate so enacted or proposed will reduce its earnings to a point which amounts to the confiscation of its property, or to the taking of its property without compensation. *Atlantic Coast Line Railroad vs. Florida*, 203 U. S. 256.

201 2. The railroad company may show that the proposed rate, when applied to its business, will not yield it a reasonable return on the fair value of the property used in the services for which the rate is paid. The return or profit which the railroad company is entitled to must not, therefore, be reckoned upon the capi-

talization of the company, but upon the reasonable value, or fair value, of the property used by the railroad for the public convenience. In other words, in considering this question, the real value of the property must be looked to, and not a fictitious value based upon the issuance of securities.

3. The Supreme Court of the United States has repeatedly declared that the railroad's right to earnings must also be limited by considerations relative to the rights of the public. This has been declared in nearly all of the cases above named, and in others. It is held that rates must be just, both to the public and the railroad. Thus, in the Reagan cases, it was stated:

"It is unnecessary to decide, and we do not wish to be understood as laying down as an absolute rule, that in every case a failure to produce some profit to those who have invested their money in the building of a road is conclusive that the tariff is unjust and unreasonable."

Again, Justice Harlan, speaking for the court in the Smyth case, said, with reference to the contention that rates ought to permit the payment of dividends as well as of expenses:

"In our opinion, the broad proposition advanced by counsel involves some misconception of the relations between the public and a railroad corporation, is unsound in that it practically excludes from consideration the fair value of the property used, omits altogether any consideration of the right of the public to be exempted from unreasonable exactions, and makes the interests of a corporation maintaining a public highway the sole test in determining
202 whether the rates established by or for it are such as may be rightfully prescribed as between it and the public."

The court in other cases has made numerous utterances to the same effect.

4. Other circumstances and conditions recognized by the court as important in determining the reasonableness of a rate, or of a railroad's income are economic in their nature, as they pertain to the industrial condition of the country through which the road is built, and other such considerations. In the Minnesota case, reported in 186 U. S. 268, it is suggested that a case may occur in which the condition of the country is such that rates high enough to pay operating expenses would be exorbitant, and would not be justified. While this statement was made in the course of the opinion in a general way, and rather as *obiter dictum*, it shows what a wide scope of consideration the court has in determining questions of this character. In the Reagan cases it was held that, if the road was unwisely built in localities where there is not sufficient business to sustain the road, the public are entitled to reasonable rates, and should not be made to suffer for the bad judgment of the railroad builders, although those rates may not yield earnings sufficient to remunerate the investors. In the Covington case it was held that, although the competition of new lines may reduce the business of the older lines, still the older line would not be justified in making rates unjust to shippers and the public, but must be content with smaller earnings. In the Smyth case the court was called upon to determine the reasonableness of a proposed general freight schedule or tariff of rates.

The opinion of the court is based very largely upon tabulated statements showing the average reduction in gross earnings which would follow from an application of the proposed new freight tariff to the business of the road during the three years preceding. To what extent the court had before it the facts relative to the economic conditions of the country and probable earnings of the roads in
203 the future does not appear. It would rather seem that the evidence, if any, on these questions was very meager, so that the court would not speculate as to the future.

The case this commission is now dealing with relates altogether to a general maximum passenger rate, while in the Smyth case the questions dealt with by the court were greatly complicated by the application of an entirely new freight tariff to the business of the several roads in Minnesota. It is clearly shown in our case that a reduction in passenger rates will produce increased travel, so that the application of the proposed maximum passenger rate to the past business of the companies does not constitute a test which absolutely determines the result of the reduction in the maximum passenger rate. It is manifest that in the Smyth case the court did not have before it the full evidence on this point which has been adduced before the commission. Increased business following a reduction in rates is a circumstance which necessarily has more weight in considering a passenger rate than in considering a system of freight rates; while freight traffic may be somewhat stimulated by a reduction of rates, yet the great bulk of it is controlled by general industrial conditions which apply with a less degree of force to passenger travel.

5. Another matter which is allowed consideration is the character of the administration of the road. If the organization and operation of the road has not been business-like and economical and fair, the company's objection to the rates of the legislature, or of the commission is greatly weakened. In other words, all the expenditures of the company of every character charged against the gross earnings may be carefully examined, analyzed and criticised, as well as all the items coming under the general head of operating expenses. In the Reagan cases it was declared that, if there has been waste in the management of the road, if the company has been paying enormous salaries or has been indulging in unjust discriminations, resulting in general loss, it cannot fairly object to a reduction in its rates. In the Wellman case, 143 U. S. 345, the court declared that they
204 should be fully advised as to what had been done with the earnings of the road, "for if so advised, it might clearly appear that a prudent and honest management would, even under the rates prescribed, secure to the bondholders their interest, and to the stockholders reasonable dividends."

The foregoing are some of the leading circumstances and considerations by which we are to be guided in determining what maximum passenger rate would be a reasonable rate to apply to the railroads in Virginia in their intra-state traffic. To undertake to enumerate in great detail all the principles applicable to the rate cases as enunciated by the Supreme Court of the United States would require a most elaborate analysis of the various cases decided by that

court, which would extend this opinion far beyond its proper limits. While reasonableness of the earnings of the railroad, which constitutes the crucial test in determining the validity of the proposed rate, must be judged by the principles so far laid down in the adjudications, yet in the end each case must depend upon its own circumstances. As was stated in the San Diego Land and Town Company case, quoting from the Covington case,

"each case must depend upon its special facts; and when a court, without assuming itself to prescribe rates, is required to determine whether the rates prescribed by the legislature for a corporation controlling a public highway are, as an entirety, so unjust as to destroy the value of its property for all the purposes for which it was acquired, its duty is to take into consideration the interests both of the public and of the owner of the property, together with all other circumstances that are fairly to be considered in determining whether the legislature has, under the guise of regulating the rates, exceeded its constitutional authority, and practically deprived the owner of property without due process of law."

The commission recognizes clearly the general principle established in *Smyth vs. Ames*, which seems to be now fairly well
205 settled; that is, that the railroad company is entitled to a fair return on the reasonable value of its property. What is the reasonable value of the property upon which the railroad company is entitled to the fair return or earnings is to be determined in the light of the general considerations above mentioned, and by all the principles so far laid down by the courts in considering these questions. In *Smyth vs. Ames*, it is stated that in determining the value of the property used in the service of the public, and upon which a return is to be estimated, the following circumstances may be considered:

(1) The original cost of construction;

(2) The present, as compared with the original, cost of construction;

(3) The amount expended in permanent improvements;

(4) The amount, in market value, of the stocks and bonds issued by the corporation;

(5) The probable earning capacity of the road under the proposed rates;

(6) The amount of operating expenses; and

(7) Other matters which may be properly considered, according to the facts in each case.

The last consideration amounts to saying that each case must be judged by its own facts.

It is almost certain that the evidence before the commission presents every possible fact and consideration bearing upon the reasonableness of a maximum passenger rate of two cents per mile more fully and extensively than any of the cases which have been before the Supreme Court of the United States. After listening for several months with great care to the testimony adduced before the commission, and upon careful scrutiny of all facts appearing from the testimony, the tabulated statements and all other data and exhibits

filed before the commission, we are of opinion that it will not unreasonably reduce the intra-state earnings of railroads in Virginia calculated upon a proper basis, should the commission put
206 into effect a maximum passenger rate less than the prevailing maximum rate, which, as to nearly all the roads, is three cents per mile.

The investigation on which the conclusions of the commission are based was perhaps the most extensive and exhaustive in its scope of any yet undertaken by rate-making bodies. The record in the freight rate cases, covering several thousand pages of typewritten matter, and the exhaustive record in the passenger rate cases, are considered together in so far as either of these records throws light on the subject before us. While the evidence has been carefully considered in its applicability to each individual company and its peculiar conditions, regarded separately, yet we do not deem it necessary or practicable to review all the evidence with the same detail in this paper, but will herein confine ourselves to an application to the evidence of those general principles which the courts have held should control the judgment and discretion of a rate-making body, deducing therefrom such conclusions as are fair, just and reasonable to the several groups of roads and dealing separately with a company only when some peculiar fact or condition differentiates it from the others of the group to which it otherwise belongs.

Proceeding along this line, we recognize not only the binding force, but the justice of the general principle that a carrier has the right to earn its operating expenses, and a fair return upon a fair value of the property used in the service. In order to reach a result in this case which shall conform to this principle, a number of facts must be, as far as possible, ascertained and determined, among the most important of which are:

(1) The gross earnings of the carrier on all its Virginia business, both inter and intra-state;

(2) The expense of conducting such business;

(3) The gross earnings derived from its Virginia intra-state business;

(4) The expense of conducting such purely intra-state Virginia business;

(5) The fair value of the carrier's property used by it in all its Virginia business;

207 (6) The fair value of the carrier's property used by it in its intra-state Virginia business;

(7) A fair and reasonable margin of profit which the carrier should be allowed to earn upon its intra-state Virginia business.

It is manifestly impossible, in the very nature of the case, to ascertain exactly any one (except the third) of the seven matters above enumerated; but the testimony submitted by the defendant carriers in this proceeding, and the facts brought out in cross-examination by members of the Commission and by counsel for the Commonwealth enabled all those matters to be ascertained with sufficient practical accuracy for the purposes of this proceeding.

It may be proper to call attention at this point to the fact that,

while the roads generally have stated their passenger *earnings* separately from their freight and other earnings, yet they have, with perhaps one exception, failed entirely to make any effort at a division between the *expense* of conducting passenger business and that of conducting freight, or other business. Thus we are without such information as will enable us to determine with accuracy the separate net profits of passenger, freight, mail, express and miscellaneous business, respectively. It is, therefore, necessary, in approaching a solution of the question before us, that we consider the earnings of the roads on all Virginia business of every kind on the one side, and the expense incurred in conducting all Virginia business of every kind on the other.

Taking up now the first of the said seven principal matters to be ascertained, namely, the gross earnings of the carrier on all its Virginia business, both inter-state and intra-state, it will be found that the evidence supplying this information, with reasonable accuracy, is furnished not only by the testimony of witnesses adduced in this proceeding, but by the operating reports of the several companies on file in the office of this Commission, and which are made a part of the record in these proceedings.

208 The establishment of the second principal fact above mentioned, viz: the expense of conducting the carrier's entire Virginia business—both inter- and intra-state—has been attempted by all the roads with varying accuracy, though every company has included in its operating expenses items which are not properly so classified.

The third matter, as to earnings derived from all Virginia intra-state traffic, has been satisfactorily fixed, in the case of all the roads appearing in this proceeding by the testimony and statistics in the evidence; and some of the roads have undertaken to state separately their earnings from intra-state passengers and from intra-state freight.

We proceed, therefore, without difficulty until we reach the fourth principal matter, which is as to the expense of conducting purely intra-state business, freight, mail, express, passenger and miscellaneous. A great mass of testimony was submitted by several of the carriers in an effort to show that the cost of conducting intra-state business was materially greater than that of conducting all business, and therefore still greater than that of conducting inter-state business. Some of the roads claimed that this excess of expense on intra-state business was not less than fifteen per cent. of the expense of conducting all business of the system; others claimed that it cost not less than fifteen cents more to earn a dollar on intra-state traffic than on inter-state traffic. Some of the roads claimed that the excess cost was greater than this. It was contended on behalf of the roads that the Supreme Court of the United States had, in the case of *Smyth vs. Ames*, 169 U. S., page 466, established as a matter of law a particular ratio between the cost of different kinds of railroad business. That case, however, does not sustain any such construction, and the evidence in this case fails to show that the intra-state Virginia business of the railroads yields a smaller percentage of profit than does their

inter-state business; and the Commission, upon the whole evidence, is of opinion that it is not so.

The argument advanced in support of the opposing theory is largely based upon the assumption that local traffic and intra-
209 state traffic are interchangeable terms; whereas, as a matter of fact, such is not the case, but, on the contrary, a large amount of intra-state traffic is carried by what might be termed "through movement," while a large amount of inter-state traffic, in whole or in part, by what might be termed "local movement."

It has been held by the Railroad Commission of Wisconsin, after an exhaustive investigation of the subject, that as much intra-state traffic is carried by through movement in that State as is carried by local movement, and that as much inter-state traffic is carried by local movement as by through movement. The evidence in this case shows that the same is very largely true as to Virginia traffic; hence we conclude that any evidence based upon the theory that intra-state traffic is approximately all local, or that inter-state traffic is approximately all through, is necessarily misleading.

It may be admitted, however, that a large proportion of intra-state traffic takes local movement, and is subject, therefore, to the relative high expense of short haul movement; but when we consider that the local or short haul rate is relatively much greater per ton per mile on a purely mileage basis than the through long haul rate, and when to this is added the further fact that the local movements are usually conducted between small points unaffected by competition, while the through movements are usually between large points, and, therefore, more or less influenced by competition, we must see that the excess of the local over the through rate becomes still greater. When we consider these things, it is apparent that the difference in the rate in the two cases is certainly large enough to offset fully any probable difference in the cost of handling and transporting the two classes of traffic. Indeed, the existing short haul rates, which, as just stated, are rarely affected by competition, have always been fixed by the free and voluntary action of the carriers themselves, without restraint, and with a view to covering fully any excess cost which may be incident to traffic moving under these rates; and an examination of the rates applicable to short hauls will show that the traffic departments of the carriers have not been unmindful of
210 the difference between the cost of the short haul local movements on the one side, and the long through movements on the other, even though both movements are performed within the State. As illustrative of this, the testimony of Mr. Coxe, a witness of the Norfolk and Western Railway, shows that the average length of their through hauls was 230 miles, and the average length of their local hauls 68 miles; and the existing tariffs of that road show that the average charge per ton per mile under a 68-mile haul under the class rates is more than double the average charge per ton per mile on a 230-mile haul; and the same comparison when made between commodity rates illustrates the same principle. This is practically true of all the roads. From the evidence in these proceedings and from the considerations aforesaid, the commission finds that the profitableness of conducting intra-state freight traffic is proportionately not

materially, if at all, less than the profitableness of conducting inter-state freight traffic.

So much for the freight traffic; but when we consider the passenger, mail, express and miscellaneous business of the roads, the case is much stronger. As a rule, the shorter hauls of passengers are conducted on the regular ticket rates, which are the higher rates; but the assumed additional cost of conducting local *freight* traffic, growing out of the fact that a great part of it must be handled in and out of cars and stations, will not apply to *passenger* traffic, since passengers handle themselves. In addition to this, there are many expenses connected with the through passenger service that are not connected with the local passenger service, such as vastly more expensive train equipment, the maintenance of passenger soliciting offices off the line of the road, the maintenance of a very much higher class of service, &c., &c.

We find that a large amount of intra-state passenger traffic is conducted on through trains, which are claimed to move at a minimum cost per passenger per mile. We find also that a considerable volume of inter-state passenger traffic is conducted on local trains, which are claimed to move at a higher cost per passenger per mile.

From these and other considerations, we cannot escape the
211 conclusion that the Virginia intra-state passenger traffic of each road involved in these proceedings is, in the aggregate, fully as profitable, in proportion, to such road as is its inter-state passenger traffic. As to the mail and express business of the railroads, the evidence is clear, and from the nature of the business it is manifest that the local mail and express business, so far as the railroad company is concerned, costs no more than does the through mail and express business,—the rates being higher, however, on local than on the through, it follows that the local mail and express business of the roads is more profitable than the through.

Finally, the miscellaneous earnings of the road, consisting chiefly of such things as rentals, demurrage, switching, &c., are all purely local, and not, strictly speaking, items of transportation at all, but, in the matter of profitableness, this branch of the road's business is the same whether the traffic upon or in connection with which it is performed, is local or through.

Having seen that, all things considered, the profitableness of intra-state freight traffic in Virginia is proportionately not materially, if at all, less than that of inter-state Virginia traffic; that the profitableness of Virginia intra-state passenger, mail, express and miscellaneous business is proportionately not materially, if at all, less than that of inter-state Virginia passenger, mail, express and miscellaneous business, it follows that the profitableness of the *whole* Virginia intra-state business is proportionately not materially, if at all, less than that of the whole Virginia inter-state and intra-state business combined.

This conclusion is strengthened by consideration of the fact that the great bulk of the inter-state traffic in Virginia is of such character as is moved by the heaviest power and equipment, representing the heaviest burden, and which imposes the necessity for large expendi-

ture of money on road-bed, track, bridges and terminals, thereby increasing the investment in property far beyond the figure which would be necessary if all traffic were of the same character as average intra-state traffic. To this may be added the fact that the cost of the heavier power and equipment used in transporting average inter-state traffic is also greatly in excess of the cost of power
212 necessary to, or actually used in, the movement of average intra-state traffic, to say nothing of the wear and tear on the rails and on the road-bed incident to the movement of heavier inter-state traffic.

Having thus compared the profitableness of Virginia intra-state business with that of Virginia inter-state business, and having seen that there is no material difference in the comparative profitableness of the two, it is plain that the entire operating expense of doing all business in Virginia should be apportioned between inter- and intra-state business, in the proportion which those branches of the road's business bear to each other in amount—that is to say, in the proportion which the gross earnings from inter-state business bears to the gross earnings from intra-state business; and since the intra-state Virginia business contains a larger proportion of short hauls than does the inter-state Virginia business, it follows that the amount of the road's plant—railroad and equipment—employed in earning one dollar of intra-state gross revenue is certainly not more—and is probably materially less—than that used in earning one dollar of Virginia inter-state revenue.

From these considerations it follows that the percentage of the entire expense of all Virginia business which Virginia intra-state business should bear, and the percentage of the entire property of the company employed in its Virginia business, upon which the intra-state Virginia business should be required to yield a fair return, is the same percentage which the gross earnings of the intra-state Virginia business bears to the gross earnings from all the Virginia business. When it is considered that the intra-state and inter-state business of the roads are inextricably mingled, being carried on by the same employees, at the same time, with the same plant and instrumentalities, over the same parts of the road, often in the same train, and not infrequently in the same car—when these things are considered, it is believed that no more fair, just, reasonable and correct basis can be found upon which to apportion the common burden and earning requirements of the whole business between the inter-state and intra-state branches thereof, than the basis above indicated, to-wit, that of gross earnings; and the Commission,
213 from a long and painstaking study of the facts and conditions, is of the opinion that if this basis is unfair to either branch of the business it is to the intra-state branch.

With a view to the application of this principle of apportionment to some of the principal roads in Virginia, we take the following tables:

1. NORFOLK & WESTERN RAILWAY COMPANY.

Virginia.

Miles operated, 1,054.00 miles.	Year 1906.
	Per mile of road.
Freight revenue	$12,829 15
Other freight earnings	27 88
Total freight earnings	$12,857 03
Passenger revenue	$2,147 99
Other passenger earnings	408 41
Total passenger earnings	$2,556 40
Total gross earnings	15,413 43
Operating expenses:	
Maintenance of way and structures	$1,721 71
Maintenance of equipment	2,728 25
Conducting transportation	4,459 69
General expense	283 86
Total operating expenses	9,193 51
Net income from operation	6,219 92
Other income from operation	99 93
Total income from operation	$6,319 85
Taxes	440 17
Balance	5,879 68
214 Interest on bonds	1,649 29
Balance for stock	4,230 39
Dividends on stock	1,879 98
Surplus	$2,350 41

2. CHESAPEAKE & OHIO RAILWAY COMPANY.

Virginia.

Miles operated, 736.9 miles.	Year 1906.
	Per mile of road.
Freight revenue	$10,195 13
Total freight earnings	$10,195 13

Passenger revenue	2,344 56
Other passenger earnings	435 10
Total passenger earnings	$2,779 60
Total gross earnings	12,974 73
Operating expenses:	
Maintenance of way and structures	$1,373 35
Maintenance of equipment	2,338 09
Conducting transportation	3,899 57
General expenses	223 81
Total operating expenses	$7,834 82
Net income from operation	$5,139 91
Other income from operation	230 76
Total income from operation	$5,370 67
Taxes	437 34
Balance	4,933 33
215 Interest on bonds	3,307 41
Balance for stock	$1,625 92
Dividends on stock	536 76
Surplus	$1,089 16

3. ATLANTIC COAST LINE RAILROAD COMPANY.

Virginia.

Miles operated, 137.54 *miles.*	Year 1906.
	Per mile of road.
Freight revenue	$11,968 96
Total freight earnings	11,968 96
Passenger revenue	2,544 74
Other passenger earnings	319 40
Total passenger earnings	$3,064 14
Total gross earnings	15,033 10
Operating expenses:	
Maintenance of way and structures	$2,161 00
Maintenance of equipment	1,966 64
Conducting transportation	5,651 09
General expenses	417 80
Total operating expenses	$10,196 53

Net income from operation	4,836 57
Other income from operation	623 08
Total income from operation	$5,459 65
Taxes	343 74
Balance	$5,115 91
216 Interest on bonds	1,009 71
Balance for stock	$4,106 20
Dividends on stock	646 59
Surplus	$3,459 61

4. SEABOARD AIR LINE RAILWAY.

Virginia.

Miles operated, 157.50.	Year 1906. Per mile of road.
Freight revenue	$8,670 70
Total freight earnings	8,670 70
Passenger revenue	1,238 88
Other passenger earnings	453 21
Total passenger earnings	$1,692 09
Total gross earnings	10,362 79
Operating expenses:	
Maintenance of way and structures	$1,020 15
Maintenance of equipment	1,231 65
Conducting transportation	3,882 61
General expenses	207 41
Total operating expenses	$6,341 82
Net income from operation	4,020 97
Other income from operation	78 04
Total income from operation	$4,099 01
Taxes	380 68
Balance	$3,718 33
Interest on bonds	1,076 11
Balance for stock	$2,642 22
217 Dividends on stock	
Surplus	$2,642 22

5 SOUTHERN RAILWAY COMPANY.

In Virginia.

Miles operated, 965.53. Year 1906.

	Per mile of road.
Freight revenue	$4,246 10
Total freight earnings	4,246 10
Passenger revenue	2,503 50
Other passenger earnings	962 92
Total passenger earnings	$3,466 42
Total gross earnings	7,712 52
Operating expenses:	
Maintenance of equipment	1,083 69
Maintenance of way and structures	$1,082 65
Conducting transportation	2,595 02
General expenses	248 06
Total operating expenses	$5,009 33
Net income from operation	2,703 19
Other income from operation	183 21
Total income from operation	$2,886 40
Taxes	236 64
Balance	$2,649 76
Interest on bonds	1,393 86
Balance for stock	$1,255 90
Dividends on stock	601 26
Surplus	$654 64

218 6. RICHMOND, FREDERICKSBURG AND POTOMAC RAILROAD COMPANY.

Miles operated, 83.20—all in Virginia. Year 1906.

	Per mile of road.
Freight revenue	$12,331 87
Total freight earnings	$12,331 87
Passenger revenue	6,953 07
Other passenger revenue	1,927 28
Total passenger earnings	$8,880 35
Total gross earnings	21,212 22

Operating expenses:

Maintenance of way and structures	2,021 96
Maintenance of equipment	2,270 25
Conducting transportation	8,708 77
General expenses	560 28
Total operating expenses	$13,561 26
Net income from operation	$7,650 96
Other income from operation	
Total income from operation	$7,650 96
Taxes	10 86
Balance	$7,640 10
Interest on bonds	1,256 25
Balance for stock	6,383 85
Dividends on stock	3,171 16
Surplus	$3,212 69

219 7. WASHINGTON-SOUTHERN RAILWAY COMPANY.

In Virginia.

Miles operated, 33.83.	Year 1906. Per mile of road.
Freight revenue	$14,559 14
Total freight earnings	14,559 14
Passenger revenue	6,015 26
Other passenger earnings	2,502 54
Total passenger earnings	$8,517 80
Total gross earnings	23,076 94

Operating expenses:

Maintenance of way and structures	$1,851 56
Maintenance of equipment	2,410 81
Conducting transportation	12,446 51
General expenses	547 27
Total operating expenses	$17,256 15

Net income from operation	5,820 79
Other income from operation	91 04
Total income from operation	$5,911 83
Taxes	524 34
Balance	5,387 49
Interest on bonds	4,456 24
Balance for stock	$931 25
Dividends on stock	2,177 21
Surplus	

220 S. NEW YORK, PHILADELPHIA & NORFOLK RAILROAD COMPANY.

In Virginia.

Miles operated in Virginia, 95.00.

	Year 1906. Per mile of road.
Freight revenue	$13,227 28
Other freight earnings	193 44
Total freight earnings	$13,420 72
Passenger revenue	2,424 11
Other passenger earnings	978 28
Total passenger earnings	$3,402 39
Total gross earnings	16,823 11
Operating expenses:	
Maintenance of way and structures	$2,170 87
Maintenance of equipment	2,257 58
Conducting transportation	6,245 22
General expenses	657 49
Total operating expenses	$11,331 16
Net earnings from operation	$5,491 95
Other income from operation	13 65
Total income from operation	$5,505 60
Taxes	313 23
Balance	5,192 37
Interest on bonds	1,285 71
Balance	$3,906 66
Dividends on stock	1,964 28
Surplus	$1,942 38

221 From an inspection of these tables, it will be seen that the Norfolk and Western Railway Company shows gross earnings for the year ending June 30, 1906, on all its Virginia business, of $15,413.43 per mile, and net earnings on the same business of $5,879.68 per mile, all based upon the freight and passenger rates in effect during that fiscal year. From this it appears that the net income of this line is a little more than 5⅞ per cent. on a valuation of $100,000 per mile of its 1,054 miles of track located and operated in Virginia.

That the Chesapeake and Ohio Railway Company for the same year, figured on the same basis, shows gross earnings of $12,794.73 per mile, and net earnings of $4,933.33 per mile; giving a net income of approximately 5 per cent. on a valuation of $100,000 per mile on its 736 miles of track located and operated in Virginia, some 85 miles of which is mere trackage rights over the lines of the Southern and Washington Southern Railroad Companies from Orange to Washington.

That the Atlantic Coast Line Railroad Company, for the same year, figured on the same basis, shows gross earnings of $15,033.10 per mile, and net earnings of $5,115.91 per mile, giving a net income of approximately 5⅛ per cent. on a valuation of $100,000. per mile of its 137 miles of track located and operated in Virginia;

That the Seaboard Air Line Railway Company, for the same year, figured on the same basis, shows gross earnings of $10,362.79 per mile, and net earnings of $3,718.33 per mile, giving a net income of approximately 3¾ per cent. on valuation of $100,000. per mile of its 157 miles of track located and operated in Virginia;

The Southern Railway Company, for the same year, figured on the same basis, shows gross earnings of $7,712.52 per mile, and net earnings of $2,649.76 per mile, giving a net income of approximately 2⅔ per cent. on a valuation of $100,000. per mile on the 965 miles of track located and operated in Virginia; the expenses of some 75 miles of which, from Orange to Alexandria, are partly borne by the Chesapeake and Ohio Railway Company;

222 The Richmond, Fredericksburg and Potomac Railroad Company shows gross earnings of $21,212.22 per mile, and net earnings of $7,640.10 per mile, or approximately 7⅔ per cent. on $100,000. per mile of its 83 miles of track located and operated in Virginia;

That the Washington-Southern Railway Company shows gross earnings of $23,076.94 per mile, and net earnings of $5,387.49 per mile, or approximately 5⅜ per cent. on $100,000. per mile of its 36 miles of track located and operated in Virginia, after deducting a grossly exorbitant charge for its interstate traffic over the Potomac River bridge, which, as well as the Washington-Southern Railroad, is controlled by the Pennsylvania Railroad Company;

That the New York, Philadelphia and Norfolk Railroad Company shows gross earnings of $16,823.11 per mile, and net earnings of $5,192.37 per mile, or approximately 5 1-5 per cent. on $100,000. per mile, after making many unusual and unwarranted deductions from net income.

These amounts are based upon the companies' own figures, but in most, if not in all, cases it appears from the evidence that many thousands of dollars included by the roads in these operating expenses and other deductions from gross revenue in order to arrive at their net revenue as they report it, should not, for the purpose of this proceeding, have been deducted from the gross revenue. And the commission finds from the evidence, that, as a matter of fact, the net revenue of each road is more, and in some cases very considerably more, than that reported by them as given in the foregoing tables. In view, however, of the fact that even the roads' own reports of their respective net revenues amply justify the action of the commission in this proceeding, the commission does not deem it necessary in this paper, to discuss or point out the extent to which the real net revenues of the several roads is greater than they calculate and report it.

Assuming, for the moment and for the purpose of comparison, that 6 per cent. is an adequate net return on the value of the property of the roads above enumerated, it appears that this rate is being earned by the several roads on the following valuations per mile respectively, stated in round figures:

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Norfolk and Western Railway Company, 6 per cent. on $98,000. per mile.

Chesapeake and Ohio Railway Company, 6 per cent. on $82,000. per mile.

Atlantic Coast Line Railroad Company, 6 per cent. on $85,000. per mile.

Seaboard Air Line Railway Company, 6 per cent. on $62,000. per mile.,

Southern Railway Company, 6 per cent. on $45,000. per mile.

Richmond, Fredericksburg and Potomac Railroad Company, 6 per cent. on $127,000. per mile.

Washington-Southern Railway Company, 6 per cent. on $90,000. per mile.

New York, Philadelphia and Norfolk Railroad Company, 6 per cent. on $85,000. per mile.

It must be borne in mind that roadbed and track as shown in miles is not the only investment of these companies; to this chief item of costs must be added also the fair value of equipment, station buildings, freight depots, warehouses and terminals, and any other item of property which *are* necessarily incident to conducting a transportation business. It is difficult to ascertain the exact values of these last named items, but taking the assessed value of these items for taxable purposes in Virginia, as shown by the records of this commission, and distributing this value on a mileage basis, it is found that it only represents the sum of $3,797.78 per mile on the Southern Railway, which is the only road in the group, which is on an earning basis low enough to be possibly affected by this question.

Having shown by the above tables the net earnings per mile of the roads named respectively, on their entire Virginia business, and that no greater percentage of the company's plant is employed in

earning a dollar of intra-state gross revenue than in earning a
224 dollar of interstate revenue, it follows that, if the net earnings of the companies from all their Virginia business, yield them a certain return upon a given valuation of their property employed in earning that revenue (as the figures just given show), then the net earnings upon the intra-state branch of that business must also yield the same return upon a similar valuation of the property employed in earning that intra-state revenue.

We now reach the question as to how far the net income of the several roads as above shown may be regarded as a fair and reasonable return upon a just and fair valuation of the property employed in earning it; and in order to answer this question, we must ascertain and determine what is a fair valuation of such property. Various bases have been suggested and considered by courts and rate making bodies for the ascertainment of the values of railroads and railroad properties.

The bond and stock basis has been suggested; but this is probably the most unreliable and untrustworthy of all measures of value of the property.

The cost of original construction has also been suggested; but this method is subject to various objections, among which is the consideration that the facts from which to determine original cost are usually too remote to be available. Even the cost of reproduction is not always a fair or reliable criterion, seeing that the market price of property, labor and material is a variable and constantly fluctuating quantity; and even if it were not, yet, whether the basis should be the cost of reproduction of the property anew, or the cost of reproduction of the property in its present state, is a question of much difficulty and doubt.

Since the roads by their accounting methods, charge enormous sums annually to maintenance of roadway and structures, and to maintenance of equipment, the aggregate of which sums is annually deducted from the gross revenues in arriving at the reported income, and has been deducted in each case from the net incomes above given, it would seem that they have protected themselves and are continuing to protect themselves financially against the con-
225 sequences of natural depreciation of their property. The evidence shows that as to most, if not all, of the roads, even improvements and betterments were to a greater or less extent deducted also from the gross revenues before arriving at the reported income.

Under the laws of this State it was, for many years, the duty of the Board of Public Works, composed of the Governor, the Auditor of Public Accounts and the Treasurer of the Commonwealth, to assess for taxation the value of all railroad property in this State; for four years past this duty has developed upon this commission, which, in the performance thereof, has made careful personal inspections of all the railroad property in the State, and availed itself of every practical source of information as to the true value of that property, and have assessed it as the facts and circumstances of the case would, in their opinion, justify, with a view of deriving there-

from for the State the fair amount of taxes, to which, under the law, it was entitled. In these annual assessments, the interests of the State is naturally in the direction of increasing, while that of the railroad companies is equally in the direction of diminishing, the value of the railroad property, therefore, it would seem but reasonable to assume that the amount of such assessments should certainly not be regarded as unreasonably low, at least so far as the railroad companies are concerned.

The assessment of railroad property in Virginia under the old Board of Public Works was in no single instance more than $15,000.00 per mile, and, under this commission, has never been up to and including the year 1906 more than $16,000.00 per mile on single track roadway proper, and in many instances it is much less.

The Commission does not hold that the taxable value of railroad property and its commercial value is or should be the same, any more than in the case of any other property, but it is manifestly true that such values should bear some reasonable relation to each other, and that the assessed value of such property as ascertained year after year in this State and in many others, where conditions are
226 similar, and with reference to many different roads, should be considered and given due weight—not as alone determining, but—as an element and a very important element in determining the true commercial value of such property. Assessments may indeed be erroneous, but it is wholly improbable that when the assessments made by States for the purpose of taxation are considered with reference to many different years, and for many different roads, it would be found that the State, for every year and every road, has made an error against itself and in favor of the road, and still more improbable would it be that the railroads had first discovered and pointed out the error.

One of the important duties of this Commission is to constantly inspect all the railroads of this State and to keep itself thoroughly posted with reference to the physical condition of the track, roadbed, structures and equipment of such property. This duty has been conscientiously and regularly performed by this body for a number of years. The necessary result of this has been to inform and keep informed this Commission of the condition and value of the railroad property of this State, as fully as any personal knowledge of property could enable one to judge of its value. This personal knowledge the Commission deems it right and proper that it should—not rely absolutely upon, but should—avail itself itself of in arriving at a fair and just estimate of the true commercial value of the property.

Few or no questions are more delicate or difficult of determination than the true commercial value of railroad property as a proper basis for rate fixing. Many persons have sought to evolve some simple and ready rule for making the estimate, and many different criteria have been suggested; but, in the opinion of this Commission, there is no single element or consideration which can be accepted as a safe or reliable guide, but that due weight and consideration must be given to many different ones.

The law as laid down by the courts requires the ascertainment of *some* value of the property as a basis upon which, as a matter of constitutional right, the company is entitled to earn a fair
227 return—in any event, at least so far as that can be done with reasonable rates. The law must contemplate then that there is some practicable method by which this value can be ascertained, and this Commission knows of no better, or more reliable method than to give due and proper consideration and weight to the following matters among others.

1st. The original cost of the property so far as it is shown.

2nd. The amount of the capital and bonded debt of the company applicable to the property in this State.

3rd. The market value of such stock and bonds.

4th. The cost of reproducing the property anew so far as it is shown.

5th. The cost of reproducing the property in its present condition so far as it is shown.

6th. The properly assessed value of the property for purposes of t-xation.

7th. The personal knowledge of the property by the Commission.

No one of these considerations should control, but due weight should be given to each. That some are entitled to much more weight than others is obvious, and that some are more easily ascertainable than others is equally obvious. For instance, the original cost of a railroad and its equipment is often absolutely unascertainable, and it is wholly impracticable to ascertain the cost of reproduction—either anew or in its present condition. Even if all of these matters were known, they could not safely be relied upon absolutely, because in many cases, particularly in this State, the property was acquired by the present owner at much less than its original cost or at which it could now be reproduced in any form.

Probably the most unreliable and misleading of all the foregoing considerations is the amount or present market value of the stock and bonds of the road. It is well-known that railroad stocks are rarely, if ever, issued for full value. In fact the general rule is that the money put into railroad property is wholly represented by its bonds, the stock being issued as a bonus and represents the
228 control, rather than the contribution to the property. Even when this is not fully true, it is impossible to tell to what extent it is true, especially when the present company, as is often the case, is the result of the merger, consolidation or re-organization of one or more corporations. Nor should the present market value of the stock at all be a controlling guide; because that value is constantly fluctuating, is readily and often manipulated, and depends much more upon the earning capacity of the road than upon the value of the property employed. It would, therefore, be but reasoning in a circle to fix the earning capacity by the value of the property employed, and then, in turn, ascertain that value by the earning capacity as reflected in the market value of the securities.

These are the considerations which have led the Commission to consider all the foregoing matters as well as everything else in the

evidence tending to throw light upon the question, but to give varying weight to each consideration, their final judgment being a composite result of them all.

By this process, the Commission has arrived at the conclusion that the entire Virginia property of no railroad company assessed by it is really worth more than $50,000.00 per mile for the entire mileage in this State, while the property of most of such companies is worth less. The Southern Railway Company's entire property, composed as it is, largely of branch lines of cheap construction and not well maintained, on which is operated light and rather cheap class of equipment, is, in the opinion of the Commission, worth greatly less on its entire mileage in this State. The assessments of the property of the Southern Railway, made by the Commission for the year 1906, are as follows:

Roadway and track	$11,348.15 per mile.
All other property	3,797.78 per mile.
Total assessment of physical property	$15,145.93 per mile.

229 The Virginia revenue law provides for the payment annually of a franchise tax at a rate of one per cent. on Virginia gross transportation receipts of the railroads. If we consider the amount of this franchise tax paid by the Southern Railway to the State, and capitalize it on the basis of $1.25 per $100.00 (estimated to be the minimum average rate of taxation in Virginia, State, county and municipal, on property generally), we would have the additional sum of $5,708.45 per mile. Adding this sum to the assessed value of all the physical property above given, we have a total valuation of $20,854.38 per mile, reached upon a basis which puts the Southern Railway upon the same plane as other tax payers of the State. The Commission is clearly of opinion that the franchise tax should not be considered in this connection, and only includes it in the figures above given for the purpose of showing the outside valuation of the Southern Railway for taxable purposes from any standpoint from which the subject might be considered.

The Commission does not propose to fix for each road, or any of them, the *least* sum to which they could be restricted as a basis for earning capacity, without transgressing the constitutional limit of confiscation. As to how far this side of that limit the regulation should stop, is, in the opinion of the Commission, a matter of legislative discretion to be exercised by it as it deems wisest and best for the public welfare, not overlooking the fact that the railroads themselves and the holders of their securities are a part, and a very important part of that public.

In the exercise of this discretion, the Commission deems it the height of unwisdom and mistaken policy to restrict the railroad companies to the utmost point legally permissible or anywhere near that point. On the contrary, the Commission deems it manifestly wise and proper that the railroads, as one of the greatest engines of civilization and prosperity, on the successful operation of which

practically every industry and every community is largely dependent, should be given every reasonable encouragement and dealt with as liberally as the public interests and the welfare of their patrons will permit.

2:30 The Commission, therefore, in its final action in these proceedings has been guided by these considerations and has decided upon the reduction in the maximum limit to passenger fares which it orders only after assuring itself, that, even if such reduction is not fully compensated by the consequential increase in business the roads will still be left, upon their intra-state Virginia business, such a margin of profit upon any fair value of the property employed as will enable their business to compare favorably in profitableness with any of the large, or standard, businesses of the country, and not even approach anywhere near the legal limit of confiscation.

But the Commission is convinced from the evidence in these proceedings, that this reduction in the maximum limit of passenger fares, when put into effect in good faith by the carriers, will not result in such a loss of revenue as would first appear from a consideration of the difference between the present maximum and the one proposed.

No branch of transportation is so responsive to lower fares as the carrying of passengers. Of course, there is a certain amount of travel which is compelled to move regardless of fares; but a very large amount of railroad traveling is the direct result of attractive rates which enable and encourage people to move about. None are better aware or more appreciative of this fact than the railroad companies themselves, who, to encourage and increase this travel, have for many years voluntarily sold a large part of their transportation at very much less than the existing maximum limit of three cents a mile. In fact, the evidence shows that but a comparatively small part of the rates actually realized are as much as three cents, and that a very large part of them have long been from two cents a mile down. In States where a maximum limit has been established by law within the last one or two years, some roads have voluntarily withdrawn all their previously existing rates of less than two cents, thus cutting themselves off from the benefit of all the traffic for which these low rates were designed, and which moved only because of it.

2:31 These lower rates consisted for the most part of excursion rates and special rates to fairs, conventions, and other public gatherings. It is perfectly obvious that the roads had theretofore granted these lower rates because of the plain business considerations that it was better to carry the people, for whom these fares were designed, at these low rates than not at all, and that this kind of passenger traffic only moved under and because of these low rates, in view of the fact that it was not obliged to move at all. These considerations are obvious just as applicable and controlling under a two-cent maximum as under a three-cent maximum, and therefore those roads which, for any reason, withdrew their former rates of less than two cents, did so voluntarily and not because the two cent limit required or forced them to it, and thus by their own act deprived themselves of that large and profitable part of their

passenger traffic which only moves because of these low rates. Except when this was done, the evidence fails to show that any standard road has suffered any substantial diminution, but shows that some of them have derived a positive increase, of their passenger revenues under a two-cent maximum fare as compared with their revenues under a three-cent maximum fare.

After a careful study of the evidence and of the entire railroad situation in this State, the Commission believes, under the maximum limit of passenger fares as prescribed by it in this proceeding.

First. That the revenues of the railroad companies affected will not be necessarily diminished as compared with their existing revenues, but may be increased;

Second. That, if their revenues be in fact diminished thereby, they will not be sufficiently diminished to work any unjust or unreasonable deduction in their net earnings; and

Third. That since the effect of such maximum limit will not be to work a greater reduction in the companies' net earnings than they could be just and reasonably called upon to bear, such reasonable reduction should be applied as far as practicable, to such rates as are best able to bear it, and most generally affect public interest. Applying this principle to the evidence in the case, so far as
232 adduced, we reach the conclusion, and there is little, if any, evidence to the contrary, that it is proper to make the bulk of reduction in passenger fares, especially since such reduction will be more surely and readily compensated for by increased business, than if a similar reduction had been made in other classes of traffic. The increased passenger revenues which must necessarily result from the withdrawal of free transportation under the operation of recently enacted laws, may be an item worthy of consideration in this connection.

So long as a company earns a satisfactory net profit from all of its intra-state business, taken in its entirety, it cannot legally or reasonably complain that more of this profit is earned out of one particular branch of that business than out of some other branch. As to which branch of intra-state business, or what particular item or items of transportation, should bear the heaviest, and which the lightest burdens, considered from the standpoint of public interest, is for the commission, and not for the railroad companies to decide, so long as the aggregate net revenue left to the companies is adequate, just and reasonable.

The commission is of opinion that a maximum rate of two cents per mile for the transportation of all intra-state passengers is not unreasonably low for the roads enumerated in the tables above given, numbered from 1 to 8, inclusive, considering the proportionate value of the property used by them in intra-state business and the character of service rendered to intra-state passengers. These roads will be specified by name in general schedule "A," hereinafter appearing. This conclusion is based upon the business of the roads, respectively, as shown by the evidence in this case, and by the operating reports for the years 1905 and 1906. It is true that the net earnings of the several railroads enumerated in this group are variable as to

amount, and the presumption might arise that the roads showing the smaller earning power should not be classed with those showing the larger. We feel that this view is defeated by the fact that the larger earning roads, with one or two exceptions, are using property
233 of much greater value per mile than that used by the smaller earners. In view, however, of the fact that the net income per mile of the Southern Railway Company is small in comparison with the other roads in the same group, it is deemed reasonable to allow, and there will accordingly be allowed, a maximum rate of two and one-half cents per mile for intra-state passengers transported on the following divisions, or branches, of the said Southern Railway Company, viz:

Norfolk Division, extending from Pinner's Point to Danville, 204 miles;

Franklin Branch, extending from Franklin Junction to Rocky Mount, 37 miles;

Claremont Branch, extending from James River Junction to Claremont, 50 miles.

So that the two and one-half cent rate will apply to 291 miles, or 30 per cent. of Virginia mileage of the Southern Railway Company.

From a careful consideration of the evidence in this case, and of the operating reports of the Virginia and Southwestern Railway Company, and Louisville and Nashville Railroad Company, we feel constrained to include, and accordingly will include them in the group of roads which are limited to a maximum passenger rate of two cents per mile. The operating reports of these two roads, on their face, might not seem to justify this reduction; but the facts appearing on cross examination relative to the method of accounting in use by these two roads fully justify a reduction of their passenger rates to two cents per mile, and they will so appear in general schedule "A."

The commission is further of opinion that a maximum passenger rate of three cents per mile should be observed as to intra-state passengers by the Winchester and Potomac Railroad Company, Winchester and Strasburg Railroad Company, and the Valley Railroad Company of Virginia. It having appeared in the evidence that a mileage book is sold by the Baltimore and Ohio Railroad Company at a rate of two cents per mile, available on these three roads, it is thought that this voluntary reduction, taken in connection
234 with the slight one herein made, is as much as the financial showing of these roads will justify at present. These roads appear in general schedule "B." In this connection it might be proper to state the net income of these three roads from all sources for the year ending June 30, 1906, as shown by the operating reports on file in this office, are:

Valley Railroad Company of Virginia, 6 per cent, on a valuation of $14,000 per mile.

Winchester and Potomac Railroad Company, 6 per cent on a valuation of $14,000 per mile;

Winchester and Strasburg Railroad Company shows a deficit after paying operating expenses.

If we treat these three lines as a part of the Baltimore and Ohio System, and consolidate their earnings, we find that under the maximum passenger rate of three and one-fourth cents now in effect on these roads, the Baltimore and Ohio net earnings from all Virginia business, inter- and intra-state, is on a basis of 6 per cent. on less than $14,000 per mile. The fact that the Baltimore and Ohio Railroad Company is a large and powerful system in other States, would not seem to affect the question before us, at least from the standpoint of the legal limitations of the rate-making power of Virginia.

These statements are not regarded by the commission as fairly representing the earnings of these roads, but, even when properly analyzed, are not such as to justify further reduction at present.

The commission is further of opinion that a maximum passenger rate of three cents per mile should be observed as to intra-state passengers by the Norfolk and Southern Railway Company, and the Virginia and Carolina Coast Railroad Company, now operated by said Norfolk and Southern Railway Company. The net income of the Norfolk and Southern Railway Company from all sources for year ending June 30, 1906, as shown by its operating report on file in this office, is $805.85 per mile, which is on a basis of 6 per cent. on a valuation of about $13,000 per mile. The net income of the Virginia and Carolina Coast Railroad for the same year is very much less. Under these conditions the commission does not feel warranted in reducing the maximum rate on these two roads below three cents per mile. These roads also appear in general schedule "B."

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The commission is further of opinion that a maximum passenger rate of three cents per mile should be observed as to intra-state passengers on all roads embraced in general schedule "B," and that a maximum passenger rate of three and one-half cents per mile should be observed as to intra-state passengers on all independent narrow-gauge steam roads, and on all independent broad-gauge roads less than ten miles in length. These roads appear in general schedule "C."

General Schedule Showing Rates of Passenger Fares for the Several Steam Roads Operating in Virginia, as Ordered by the State Corporation Commission.

SCHEDULE A.—(2 CENTS PER MILE.)

Norfolk and Western Railway Company,
Chesapeake and Ohio Railway Company,
Atlantic Coast Line Railroad Company,
Seaboard Air Line Railway,
Southern Railway Company,
Richmond, Fredericksburg and Potomac Railroad Company,
Washington-Southern Railway Company,
New York, Philadelphia and Norfolk Railroad Company,
Virginia and Southwestern Railway Company,
Louisville and Nashville Railroad Company.

Except that a maximum rate of two and one-half cents per mile will apply on the following divisions or branches of the Southern Railway Company:

Norfolk Division, extending from Pinner's Point to Dan-
236 ville, 204 miles, exclusive of so much of the said division as may be in the State of North Carolina.

Franklin Branch, extending from Franklin Junction to Rocky Mount, 37 miles.

Claremont Branch, extending from James River Junction to Claremont, 50 miles.

SCHEDULE B.—(3 CENTS PER MILE.)

Chesapeake-Western Railway.
Cumberland Valley and Martinsburg Railroad Company.
Danville and Western Railway Company.
Indian Creek and Pound River Railroad Company.
Marion and Rye Valley Railway Company.
Nelson and Albemarle Railway Company.
Valley Railroad Company of Virginia.
Virginia-Carolina Railway Company.
Virginia Southern Railroad Company.
Winchester and Potomac Railroad Company.
Winchester and Strasburg Railroad Company.
Norfolk and Southern Railway Company.

SCHEDULE C.—(3 1-2 CENTS PER MILE.)

Big Sandy and Cumberland Railroad Company.
Big Stone Gap and Powell's Valley Railway Company.
Black Mountain Railway Company.
Interstate Railroad Company.
Lick Creek and Lake Erie Railroad Company.
Mt. Airy and Eastern Railway Company.
New River, Holston and Western Railroad Company.
Potomac, Fredericksburg and Piedmont Railroad Company.
Surry, Sussex and Southampton Railway Company.
Tidewater and Western Railroad Company.
Virginia Anthracite Coal and Railway Company.
Virginia and Kentucky Railway Company.
Wise Terminal Company.

237 It has been urged by the carriers that the prices of materia and labor have greatly increased during the period of this investigation, and are continuing to increase since the evidence in the case was taken. Examination shows, however, that, in practically all cases, the gross earnings of the roads are also increasing, and that the most that can be said as to this claim, when properly analyzed is that the profits on increased gross earnings are being absorbed by increased charges for labor and material, though the commission i

not prepared to find that even this is wholly true. In the case of some of the roads, such for instance as the Southern, it is found that they are failing to accept and carry much of the intra-state Virginia traffic originating on their lines, or tendered to them by connecting lines, and which is now making urgent demand upon them for transportation. This failure to transport traffic tendered, and naturally tributary to them, is not found to exist on those roads which are conducting the largest amount of business, but on the roads which are handling along their tracks, a volume of traffic below the average. It would appear from the evidence that if many of the roads which complain of lack of revenue would utilize fully, as they should, the improved facilities now owned by them, both of power and equipment, in the transportation of traffic already offered to them, the profit arising from increased business would soon take care of any increase in the cost of material and labor.

The State of Virginia and the whole South is throbbing with energy and enterprise, and teeming with traffic as never before. The field of opportunity for railroad companies has widened and continues to widen beyond the most sanguine expectations of their official heads, and admittedly far beyond their present state of preparedness. We have shown that the net profit arising from the handling of this greatly increased and increasing traffic, even under the reduction herein ordered, will be equal to, if not greater than that enjoyed by other standard and legitimate business in the country. It is inconceivable that the carriers should, under these conditions,
find themselves unable to command the financial credit neces-
238 sary to the performance of their public duties, and to the
provision of such increased facilities in the nature of track, terminals and equipment, as may be necessary to keep pace with the expansion of traffic, of which they are to become the beneficiaries.

VIRGINIA, *City of Richmond, To-wit:*

We, R. R. Prentis and R. T. Wilson, Chairman, and Clerk, respectively, of the State Corporation Commission of Virginia, do hereby certify that the foregoing is a full, complete and true copy of the written opinion of the said Commission which is referred to in the last order contained in the foregoing transcript of record, and which opinion, by said order, is made a part of the record of the proceeding in which said order was entered.

In testimony whereof, we have hereunto set our hands, and affixed the seal of the said State Corporation Commission, this the 25th day of June, 1907.

[Seal of the State Corporation Commission of Virginia.]

ROBERT R. PRENTIS,
Chairman.
R. T. WILSON, *Clerk.*

This day R. T. Wilson, Clerk of the State Corporation Commission of Virginia, to me personally known, appeared in person before

me, the undersigned, a Notary Public in and for the City of
239 Richmond, in the State of Virginia, and, before me, in my said city, subscribed and made oath to the foregoing certificate.

In testimony whereof I have hereunto set my hand and affixed my official seal this, the 25th day of June, 1907.

[NOTARIAL SEAL.] JNO. S. EGGLESTON,
Notary Public.

240 *Decree Directing Coupons to Issue to Purchasers of Tickets, &c., and Continuing Restraining Order Awarded May 14th, 1907.*

Entered and Filed June 29th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,
versus
BEVERLEY T. CRUMP and Others, Defendants.

This cause came on this day to be heard on the papers formerly read and on the application of the complainant herein, in accordance with the sixth section of the order entered herein on May 14th, 1907, and it being impossible for the court to determine the motion for an injunction *pendente lite* until after the 1st day of July, 1907, the date fixed in the order of the State Corporation Commission of Virginia for the rates thereby prescribed to go into effect; to the end that the rights of no one shall be put in jeopardy but that proper arrangements shall be made and orders entered whereby the legal status of all parties affected by this litigation shall be preserved, the court doth adjudge, order and decree that the complainant, on the 1st day of July, 1907, or if that be impossible, then as soon thereafter as practicable, give to any person who travels between points on its line in the State of Virginia, a coupon
241 substantially in the following form, to-wit:

"Atlantic Coast Line Railroad Company.

Virginia Ticket Claim Coupon.

To be retained by passenger.

Not good for passage.

—— to ——

Issued under an order of the United States Circuit Court for the Eastern District of Virginia in a suit in equity, No. 577, therein

pending, between Atlantic Coast Line Railroad Company and Beverley T. Crump, *et al.*"

and that said coupon shall be of such form and number as that from it, in connection with the ticket or other evidence of transportation to which it corresponds, may be ascertained the sum to which such person shall be entitled in the event that the order entered by the State Corporation Commission of Virginia on the 27th day of April, 1907, is in this cause finally upheld as a valid and binding order.

And the Court doth further adjudge, order and decree that the restraining order heretofore awarded in this cause on the 14th day of May, 1907, be and the same is hereby continued until the further order of this court.

J. C. PRITCHARD,
U. S. Circuit Judge.

June 29th, 1907.

242 *Special and Limited Appearance for Defendants.*

Filed July Rules, Monday, July 1st, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY, *Complainant,*
versus
BEVERLEY T. CRUMP, HENRY C. STUART, and JOSEPH E. WILLARD, Individually, and as Constituting the State Corporation Commission of Virginia, and R. T. WILSON, Clerk of the State Corporation Commission of Virginia, Defendants.

Special and Limited Appearance at Rules for Defendants on the First Monday in the Month of July, 1907.

We, the undersigned attorneys-at-law, hereby appear for, and on behalf of, the defendants in the above named cause, for the purpose of objecting to the jurisdiction of this court to entertain the said cause, or to make any order therein, against the said defendants, or any of them, and for that purpose alone, this appearance is limited, and is made especially and solely for the purpose of objecting to the jurisdiction of the Court, in said cause, and for no other purpose whatsoever.

WILLIAM A. ANDERSON,
A. CAPERTON BRAXTON,
Solicitors and Counsel for said Defendants.

243 *Affidavit of W. J. Craig, Passenger Traffic Manager of Atlantic Coast Line Railroad Company, on Behalf of Complainant.*

Filed July 1st, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,
versus
BEVERLEY T. CRUMP and Others, Defendants.

STATE OF NORTH CAROLINA, *County of New Hanover, To-wit:*

Personally appeared before me, the undersigned Notary Public in and for the County and State aforesaid, W. J. Craig, who being by me duly sworn, deposes and says:

That he is Passenger Traffic Manager of the Atlantic Coast Line Railroad Company, and as such is familiar with the methods of doing the passenger business of said Company, and with the necessities thereof.

Deponent further states that he is advised that the law of the State of Virginia provides a method of appealing from an order of the State Corporation Commission of said State, fixing the rates or fares to be charged by any public service corporation subject to the jurisdiction of said Commission; deponent says that he is advised that no appeal may be taken from any such order by any corporation affected thereby except as is provided in the Constitution and statutes of the said State, and that he is further advised that said consti-

244 tution and statutes provide that no writ of supersedeas, or suspension of any order of said Commission, pending the hearing and determination of such appeal, except as in said constitution and laws provided, and that the provisions of said constitution are essentially as follows, to-wit:

First. That the Company desiring to appeal and secure a writ of supersedeas or suspension of the order of said Commission shall file with the said Commission, a bond, with surety to be approved by said Commission, sufficient in amount to insure the prompt refunding to the parties entitled thereto, of all charges which said Company may collect or receive, pending the appeal, in excess of those fixed or authorized by the final decision of the Court of Appeals of Virginia, on such appeal;

Deponent further states that he is advised that the said constitution and laws further provide:

"The Commission, upon the execution of such bond shall forthwith require the appealing company, under penalty of the immediate enforcement (pending the appeal and notwithstanding any supersedeas), of the order or requirement appealed from, to keep such accounts, and to make to the commission from time to time, such reports, verified by oath, as may, in the judgment of the commission, suffice to show the amounts being charged or received by

the company, pending the appeal, in excess of the charge allowed by the action of the commission appealed from, *together with the names and addresses of the persons to whom such overcharges will be refundable*, in case the charges made by the Company pending the appeal, be not sustained on such appeal:

Deponent states that in view of the requirements of said Constitution and laws contained in said quotation next above, and especially in view of the portion thereof which he has underscored in this affidavit, that, as a practicable matter, any railroad company desiring to appeal from an order fixing its passenger rates, would be unable to comply with the terms thereof, and hence would, as he is advised, be unable to secure a supersedeas or suspension of the order fixing such rates pending said appeal. Deponent states, in explanation of the foregoing, that persons desiring to take passage on the
245 trains of said company, as well, as other companies, are accustomed to purchase tickets for passage thereon, before boarding such trains; that such persons do not come to the depots from which said trains leave until very shortly before the leaving time thereof, with few exceptions; that fully eighty per cent. of the tickets sold for use on trains are sold to passengers as they apply by the agents of the Company within the last ten minutes prior to the departure of such train; that there is usually a rush for tickets just prior to the departure, especially on all occasions where any unusual number of persons apply for passage on any certain train, or where the travel is heavy because of any event or condition; that if the ticket agents of the company are required by law to inquire of each person applying for a ticket his name, his address, and the name of the person, and the address for whom such ticket is purchased, in case the person applying is not purchasing a ticket for himself, and are further required by law to make a permanent record of the answers given by such person applying, such record to show the name and address of the person for whom the ticket is purchased, as well as the amount paid therefor, and all other information necessary to determine the amount of refund that may eventually be returnable to such purchaser, if said appeal is not sustained, that such ticket agents will be wholly unable to sell tickets to the persons applying, and will be unable to comply with the requirements of the law, and the necessities of the business in their charge; that the performance of such conditions would render it impossible to move the trains of the Company upon any schedule, and would, by reason of the necessary failure to comply with the said conditions, subject the said company to many claims for damages, law suits and other grievances. Depon-
246 ent therefore says that viewed from the standpoint of practical requirements of the business of receiving and transporting passengers, the conditions to be fulfilled in order to obtain a suspension of an order fixing passenger rates as aforesaid, would render it impossible for said Company to obtain such suspension, and still transact its passenger business as required by law.

W. J. CRAIG.

Subscribed and sworn to before me this 22nd day of June in the year 1907.

[NOTARIAL SEAL.] BERTRAM QUELCH, *N. P.*

My commission expires May 15th, 1908.

247 *Agreement of Counsel.*

Filed July 1st, 1907.

In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant.
versus
BEVERLEY T. CRUMP and Others, Defendants.

It is agreed that, if the court should hold that it has juridiction of this cause, then it need not go into the question of the merits upon the hearing of this rule, but may thereupon grant the preliminary injunction referred to in the rule and refer the cause to a Master; provided that the sole purpose and effect of this stipulation is and shall be that the granting of such preliminary injunction and the referring of the cause to a Master without further affidavits or testimony on the merits on the part of the Complainants shall not be assigned or treated as error; all other rights and remedies whatsoever of the defendants shall remain unaffected, and particularly shall they not be considered as or regarded as having made any concession upon the question of the juridiction of this court or the conclusiveness as a matter of law of the action or order of the Virginia State Corporation Commission in the premises, all questions on the merits being reserved for a hearing before the Master and before the Court on final hearing—the concession made herein by the defendants as to the granting of the interlocutory injunction is not to be used against them on any question of fact, or legal presumption as to fact, either before the Master or before the Court on the final hearing on the merits.

248 *Memorandum of the Court.*

Filed July 10th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant.
versus
BEVERLEY T. CRUMP and Others, Defendants.

I fully appreciate the fact that the questions involved in this controversy are serious in their character and require the closest scrutiny in order that a proper conclusion may be reached in determining the same.

It is always a source of regret to me to be called upon to determine the validity of an Act of a legislative or other body representing a sovereign State, and in this instance, it is especially so, entertaining as I do, the profoundest respect for the State of Virginia and her institutions. This is also true of North Carolina, where I have been recently called upon to decide questions similar to those involved in this proceeding, and applies with equal force to any of the States of the union. However, I am called upon to preform a solemn duty and the obligation which rests upon me to determine the questions involved in this cause in accordance with the provisions of the Constitution of the United States is imperative. It is not my purpose to attribute any unworthy motives to those who framed the provisions of the constitution authorizing the creation of the Corporation Commission of Virginia. I am satisfied that those who instrumental in securing the adoption of such provisions were honestly endeavoring to devise some means by which there could be a proper ascertainment of rates to be charged by railroads and other public corporations, yet in determining the questions presented for my consideration it becomes my duty to ascertain, if possible, the effect of the constitutional provisions in question. The courts cannot consider motives nor public policy in dealing with questions of this character, but must be guided solely in construing the same by the limitations imposed by the constitution of the United States. The power and duty of the courts of the United States to afford to individuals protection for their constitutional rights in respect to property even as against persons claiming under authority of the United States itself have repeatedly been recognized by the Supreme Court of the United States. A notable case being the one where the descendants of General Robert E. Lee instituted suit against officers of the United States for the possession of Arlington and the Circuit Court of the United States for the Eastern District of Virginia afforded relief to the constitutional rights of these descendants of General Lee for the possession of that property, and this decision of the Circuit Court was affirmed by the Supreme Court of the United States in the case of the United States *vs.* Lee 106 U. S. 196. The decision of the Circuit Court in this case is reported under the title of the Arlington case, 3rd Hughes 36.

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The complainant in this cause seeks to enjoin the enforcement of certain passenger rates recently adopted by the State Corporation Commission of the State of Virginia. It insists that its present rates in the State of Virginia are not higher than a reasonable compensation for the services rendered by it to travellers on its lines, and are in no sense excessive or exorbitant; that they are not unjustly, unduly unreasonable or illegally discriminatory between individuals, nor as between localities and that they in no way violate the law. It also insists that it has as an incident of its property, and as a property right, the right to charge for each service it renders a reasonable compensation, and that it is protected by the Fourteenth Amendment to the Constitution of the United States in making, receiving and collecting such charge. It is also insisted that the effect of the proposed rates would be to materially diminish its charges and reduce the same greatly below what would be reasonable

250

and just compensation for the respective services rendered to t
patrons of its lines. It is contended that to prevent it from chargi
a reasonable compensation for the services rendered to the travelli
public would be to deprive it of its property without just compen
tion and without due process of law.

It is likewise insisted by the complainant that if the order of
State Corporation Commission of Virginia prescribing and fixi
rates should be permitted to go into effect it would subject it to
danger of a multitude of suits based on such order and to prose
tions for penalties in enormous amounts.

Among other things complainant prays for an injunction agai
Beverley T. Crump, Henry C. Stuart, Joseph E. Willard, indivi
ally, and as constituting the State Corporation Commission of V
ginia, and R. T. Wilson, Clerk of the State Corporation Commiss
during the pendency of this suit.

On May 14, 1907, an order was entered restraining the defenda
from enforcing the provisions of the aforesaid Act, and at the sa
time, notice was issued to the defendants to appear before me on
27th day of June 1907, and show cause why the injunct
251 should not be continued until the final hearing.

The defendants file an answer in which they say that
rates fixed by the State Corporation Commission are not confiscat
However, when the motion came on for hearing counsel repres
ing complainant and defendants signed an agreed statement of fa
as to that part of the bill which charges that the rates are confi
tory. The part of the agreement which is essential to the determ
tion of the questions now before the court, reads as follows:

"It is agreed that, if the court should hold that it has jurisdic
of this cause, then it need not go into the question of the merits u
the hearing of this rule but may thereupon grant the prelimi
injunction referred to in the rule and refer the cause t
master. * *"

In view of the foregoing agreement the only question left for
sideration, is whether this court has jurisdiction of the questions
volved.

It is insisted by counsel for the defendants that the State Corp
tion Commission of Virginia is a court within the meaning and
tent of the provision of Section 720 of the Revised Statutes of
United States, which reads as follows:

"The writ of injunction shall not be granted by any court of
United States to stay proceedings in any court of a State, excep
cases where such injuction may be authorized by any law rela
to proceedings in bankruptcy."

I have heard with much pleasure the unusually able and inte
ing arguments of counsel representing complainant and defenda
and have given the questions presented much consideration, an
this connection, will say that, I have never had presented to
question which has caused me greater concern than the one invo
in this hearing.

Section 720 of the Revised Statutes is plain and explicit and
not be misinterpreted, but I am forced to the conclusion that it
not apply in this instance.

It is true that the Court of Appeals of Virginia has held
252 that the Corporation Commission of Virginia possesses judicial, executive and legislative functions. Nevertheless I am of opinion that in fixing the rates involved in this controversy the Corporation Commission was exercising a legislative function, and therefore was not acting as a court within the meaning of Sec. 720 of the Revised Statutes, and its acts in attempting to put in force the rates thus established are administrative. Under these circumstances, this court has jurisdiction to restrain the defendants from publishing and enforcing the rates which have heretofore been prescribed and established by said Commission. The acts sought to be restrained being purely ministerial in their character, the complainant seeks to assert a right which is guaranteed by the Constitution of the United States and it thereby becomes the duty of the court to entertain jurisdiction in order that the reasonableness of such rates may be judicially determined.

It is not necessary, at this time, to pass upon the validity of the provision of the Constitution of Virginia which created the State Corporation Commission; that is a question which the court reserves until the final hearing of this cause.

For the reasons herein stated the restraining order heretofore granted will be continued until the final hearing.

In conclusion, I will say that it is a source of gratification to me to know that my decision in respect to this question is not final, but that it is to be ultimately submitted to the Supreme Court of the United States for determination, and if I have committed error that distinguished tribunal will correct the same.

253 I will prepare an opinion at an early date in which I will discuss more fully my views in regard to the matters in controversy.

Decree Granting Interlocutory Injunction.

Entered and filed July 10th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant.
versus
ROBERT R. PRENTIS, (Substituting Defendant for Beverley T. Crump) and Others, Defendants.

Before Honorable J. C. Pritchard, Judge of said Court.

In pursuance of the order to show cause, made herein on the fourteenth day of May, 1907, by which the said defendants were ordered to appear before this Court in the United States Court Room at Asheville, North Carolina, at ten o'clock A. M., on Thursday, the twenty-seventh day of June, 1907, to show cause, if any they had or could show, why an injunction *pendente lite*, as prayed in the bill, should not be issued, said defendants appeared by counsel, and, by consent

of defendants, through their Counsel, and of the complainant, through its counsel, the fourth paragraph of the order herein of May 14, 1907, was amended so as to require the defendants, and each of them, to show cause before a judge of this court (instead of
254 before this court) in the United States Court Room at Asheville, on the date mentioned; and thereupon the defendants filed their answer in writing objecting to the jurisdiction of the court in the premises; and, by like consent, Robert R. Prentis was substituted as one of the defendants in this cause in the place of the defendant Beverley T. Crump, said Robert R. Prentis having, since the institution of this suit, succeeded the said Beverley T. Crump as a member, and as Chairman, of the State Corporation Commission; and it was stipulated, at the bar of this Court, between counsel for the complainant and counsel for the defendants, as follows:

"It is agreed that, if the court shall hold that it has jurisdiction of this cause, then it need not go into the question of the merits upon the hearing of this rule, but may thereupon grant the preliminary injunction referred to in the rule, and refer the cause to a Master; provided that the sole purpose and effect of this stipulation is, and shall be, that the granting of such preliminary injunction, and the referring of the cause to a Master, without further affidavits or testimony on the merits on the part of the Complainant, shall not be assigned or treated as error; all other rights and remedies whatsoever of the defendants shall remain unaffected, and particularly shall they not be considered as, or regarded as, having made any concession upon the question of the jurisdiction of this court or the conclusivensss as a matter of law of the action or order of the Virginia State Corporation in the premises, all questions on the merits being reserved for a hearing before the Master and before the Court on final hearing—the concession made herein by the defendants as to the granting of the interlocutory injunction is not to be used against them on any question of fact, or legal presumption as to fact, either before the Master or before the Court on the final hearing on the merits."

And thereupon the motion of the Complainant for an interlocutory injuction, as prayed in the said bill, coming on to be heard before the judge of this court, and the said motion having been heard upon the bill of complaint in this cause, treated as an affidavit, upon the answer thereto of the defendants objecting to the jurisdiction of the court, upon said stipulation of counsel, and upon the affidavits filed herein by the complainant, and the said motion having
255 been argued by counsel, and having been fully considered, it is now ordered:

1. That, until the further order of the Court herein, the defendants Robert R. Prentis, Henry C. Stuart, and Joseph E. Willard, constituting the State Corporation Commission of Virginia, and each and all of their successors in office, their and each of their servants, agents and employees, be, and they hereby are, restrained and enjoined from publishing, or having published, in any newspaper published in the City of Richmond, Virginia, the general order of the State Corporation Commission bearing date the twenty-seventh day of April, 1907, in respect to passenger rates, in the bill in this cause

mentioned, and from taking any other step or steps whatsoever under the Constitution or laws of Virginia, or otherwise, to enforce the requirements of said order.

2. That, until the further order of the Court herein, the defendant, R. T. Wilson, Clerk of the State Corporation Commission, his successors in office, and his servants, agents and employees, be, and they hereby are, restrained and enjoined from publishing, or having published, the said order of the State Corporation Commission in any newspaper published in the City of Richmond, Virginia.

3. That, until the further order of the Court herein, the owners, proprietors, or managers of any newspaper published in the city of Richmond, Virginia, be, and each and every one of them is, hereby restrained and enjoined from publishing, or having published, under the direction of the State Corporation Commission or of the Clerk thereof, such order of the State Corporation Commission of Virginia.

4. That said Complainant, or some one for it, shall, before
256 a judge of this Court, or the Clerk thereof, execute a bond in the penalty of Thirty Thousand Dollars, with surety to be approved by such Judge, or by such Clerk, conditioned to pay into the registry of this court, from time to time, when and as the Court may so order, such sum or sums of money as shall be equal to the difference between the aggregate passenger rates charged and received by it for intrastate services on its lines in the State of Virginia, and what would have been the aggregate amount for such services, at the rates fixed in said order of the State Corporation Commission of Virginia of the twenty-seventh day of April, 1907, and further conditioned, that, whereas an interlocutory injunction has been issued in the above entitled cause, by the terms of which the defendants, and each of them, are restrained until the further order of the Court, as from said order will appear, now, should such interlocutory injunction be dissolved or vacated as having been wrongfully issued, or because said acts were improperly restrained, then that the complainant shall pay, or cause to be paid, all damages caused by the issue of such interlocutor*w* injunction, and the costs of this cause in connection therewith.

5. That the complainant shall give to any person purchasing a ticket for intrastate travel on its lines in the State of Virginia, and to any person purchasing a mileage book for travel on its lines in the State of Virginia, and not good outside of the said State, a transferable coupon, or other written or printed evidence, representing the sum which such person, or his transferee, will, upon the final decision of this cause upholding the validity of said order of April 27, 1907, in respect to passenger rates, be entitled to
257 receive out of the cash deposit to be made in the registry of this Court, in pursuance of the obligation of the bond hereinbefore mentioned. The form of said coupon, or of other written or printed evidence, shall be substantially as follows:

"Atlantic Coast Line Railroad Company.

Virginia Ticket Claim Coupon.

To be retained by passenger.

Not good for passage.

—— to ——

Issued under an order of the United States Circuit Court for the the Eastern District of Virginia, in a suit in equity, No. 577, therein pending, between Atlantic Coast Line Railroad Company and Beverley T. Crump, *et al.*"

and that said coupon shall be of such form and number as that from it, in connection with the ticket or other evidence of transportation to which it corresponds, may be ascertained the sum to which such person shall be entitled in the event that the order entered by the State Corporation Commission of Virginia on the 27th day of April, 1907, is in this cause finally upheld as a valid and binding order.

But nothing herein contained shall be construed as requiring the complainant to issue any such coupon, or any such other written or printed evidence, in connection with the sale of any mileage book, or any ticket, good for an interstate passage, or for passage in another state, or in other states.

6. That the complainant shall preserve to be produced, whenever so ordered by the Court herein, all cancelled tickets in respect to which such coupons or other written or printed evidence may have been issued, and may be outstanding, and shall, from time to time, report to the Court, at intervals to be fixed by an order of the Court herein, statements showing the revenue by it charged and collected for its services in the intrastate transportation of passengers
258 in Virginia, in excess of the amount permitted by the said order of April 27th, 1907, and the complainant shall, from time to time, give such further bond or bonds as the Court may require, to secure the proper payment into the registry of the Court of all amounts which finally it shall be adjudged that it should so pay under the final decision in this cause.

7. If it shall be determined herein that the Complainant is entitled to the amount covered by said bond or bonds, then said bond or bonds shall be released and cancelled by the Court, and, if any amount shall have then been paid into the registry of the Court pursuant thereto, then upon such determination in favor of the complainant, the sum of sums so paid into the registry shall be repaid to the complainant without further order of the Court herein.

8. It is further ordered that a writ of injunction shall forthwith issue in accordance with this order.

9. And thereupon the complainant tendered its bond to comply with the provisions in respect to a bond in this order, duly executed by the complainant is principal, and by the American Surety Com-

any of New York, as surety, which said bond, and the execution
hereof, and the surety thereto, are hereby approved.
July 10th, 1907.

J. C. PRITCHARD,
U. S. Circuit Judge.

59 *Injunction Bond.*

Filed July 10th, 1907.

the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,
versus
OBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

Know all men by these presents, that Atlantic Coast Line Railroad mpany, a corporation of the State of Virginia, as Principal, and nerican Surety Company of New York, as Surety, are held and mly bound unto the United States of America in the just and full m of Thirty Thousand Dollars, for the payment of which, well d truly to be made, we do hereby jointly and severally bind ourves and each of our successors, firmly by these presents.
Sealed with our seals, and dated this 10th day of July, in the ar 1907.
The condition of the above obligation is such, that
Whereas an interlocutory decree has been made in the above titled cause, by the terms of which Atlantic Coast Line Railroad mpany, complainant in the said cause, Principal, is ordered to exete a bond conditioned to pay into the registry of this Court from ne to time, when and as the said Court may so order, such sum or ns of money as shall be equal to the difference between the aggate passenger rates charged and received by it for intrastate services on its lines in the State of Virginia, and what would 0 have been the aggregate amount for such services at the rates fixed in the general order of the State Corporation Commisn of Virginia, bearing date the twenty seventh day of April, 07; and
Whereas it is ordered that the said Atlantic Coast Line Railroad mpany, principal, shall preserve, to be produced whenever so dered by the Court herein, all cancelled passenger tickets in conction with which coupons or other written or printed evidence ay have been issued, as required by the said decree, and may be tstanding, and shall, from time to time, report to the Court, at ervals to be fixed by the order of the Court herein, statements owing the revenues by it charged and collected for its services in e Virginia intrastate transportation of passengers, in excess of the ounts permitted by said general order of the Virginia State Corration Commission; and

Whereas it is ordered that, from time to time, the said Atlantic Coast Line Railroad Company shall give such further bond or bonds as the Court may require, to secure the proper payment into the registry of the Court of all amounts which finally it shall be adjudged that it shall so pay under the final decision in this cause:

Now, therefore, if the above named Atlantic Coast Line Railroad Company shall well and truly comply with each and every one of the above requirements of the said interlocutory decree above mentioned, and such other decree or decrees as this Court may enter in this cause, and if the said Atlantic Coast Line Railroad Company, Principal, shall pay or cause to be paid all damages caused by the issue of said interlocutory injunction, and the costs of this cause in connection therewith, in the event that the said interlocutory injunction shall be dissolved or vacated as having been wrongfully issued, or because the said Acts were improperly restrained, then the
261 foregoing obligation to be null and void; otherwise to be and remain in full force and effect.

In Testimony Whereof the parties hereto have caused these presents to be duly signed in their respective names and their respective seals to be hereunto affixed this 10th day of July, in the year 1907.

[Seal of Atlantic Coast Line Railroad Company.]

ATLANTIC COAST LINE RAILROAD COMPANY,
By ALEXANDER HAMILTON,
First Vice President.

Attest:
R. D. CRONLY,
Assistant Secretary.

[Seal of American Surety Company of New York.]

AMERICAN SURETY COMPANY OF NEW YORK,
By ROBT. LeMASURIER, *Agent.*

262 *Interlocutory Injunction.*

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

The President of the United States of America to Robert R. Prentis, Henry C. Stuart, Joseph E. Willard, and R. T. Wilson; and to their agents, servants and employees and successors in office, and each and every of them; and to the owners, proprietors and managers of all newspapers published in the City of Richmond, Virginia, and each of them, Greeting:

Whereas the Honorable Judge of the Circuit Court of the United States for the Eastern District of Virginia, has, on the tenth day of

July, 1907, after due notice and hearing, ordered that an injunction issue as herein stated, therefore:

1. Until the further order of the Court herein, the defendants, Robert R. Prentis, Henry C. Stuart, and Joseph E. Willard, constituting the State Corporation Commission of Virginia, and each and all of their successors in office, their and each of their servants, agents and employees are, and each of them is, hereby restrained and enjoined from publishing, or having published, in any news-
263 paper published in the City of Richmond, Virginia, the general order of the State Corporation Commission bearing date the twenty seventh day of April, 1907, in respect to passenger rates, in the bill in this cause mentioned, and from taking any other step or steps whatsoever, under the Constitution or laws of Virginia, or otherwise, to enforce the requirements of said order.

2. Until the further order of the Court herein the defendant R. T. Wilson, Clerk of the State Corporation Commission, his successors in office, and his servants, agents and employees are, and each of them is, hereby restrained and enjoined from publishing, or having published, the said order of the State Corporation Commission in any newspaper published in the City of Richmond, Virginia.

3. Until the further order of the Court herein, the owners, proprietors or managers of any newspaper published in the City of Richmond, Virginia, are, and each and every of them is, hereby restrained and enjoined from publishing, or having published, under the direction of the State Corporation Commission, or of the Clerk thereof, such order of the State Corporation Commission of Virginia.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at the City of Richmond, Virginia, in said District, this tenth day of July, A. D., 1907.

[Seal of United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

264 *Marshal's Return.*

Executed July 11th, 1907 by delivering in person to Robert R. Prentis, Joseph E. Willard and R. T. Wilson at the office of the State Corporation Commission of Virginia at Richmond, Va., each a true copy of the within order, and further executed July 11th, 1907, by delivering in person to J. St. George Bryan at the office of the Richmond Times Dispatch in the City of Richmond, Va., a true copy of the within order, the said J. St. George Bryan being the Secretary and Treasurer of the said Richmond Times Dispatch Company, and President of said Company not being found, and to Alfred B. Williams in person at the office of the News Leader in Richmond, Va., he being the President of the said News Leader Company, and to Charles B. Cooke in person at the office of the Evening Journal in Richmond, Va., he being the President of the

said Evening Journal, each a true copy of the within order, and further executed July 13th, 1907, by delivering in person to Henry C. Stuart at the office of the State Corporation Commission of Virginia in Richmond, Va., a true copy of the within order.

MORGAN TREAT,
United States Marshal.

265 *Demurrer of Robert R. Prentis to Bill of Complaint.*

Filed August Rules, Monday, August 5th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump), and Others, Defendants.

The Demurrer of Robert R. Prentis, one of the defendants to the above styled suit, to the bill of complaint of the above named complainant.

This defendant, by protestation not confessing or acknowledging all or any of the matters and things in the said plaintiff's bill to be true in such manner and form as the same are therein set forth and alleged, demurs thereto, and for cause of demurrer shows:

First. That the said plaintiff has not, in and by the said bill, made or stated any such cause as doth or ought to entitle it to any such relief as is hereby sought and prayed for;

Second. That this defendant has no personal or individual
266 interest in the matters and things referred to in said bill;

Third. That the said plaintiff has an adequate remedy at law;

Fourth. That the matters and things complained of in said bill are *res adjudicata;*

Fifth. That this court has no jurisdiction to hear and determine this cause, for the reason that this is a suit against the State of Virginia;

Sixth. That this court has no jurisdiction to hear and determine this cause, for the reason that the State Corporation Commission is a "court" of the State of Virginia, and this court is therefore without power to enjoin the said Commission;

Seventh. That this court has no jurisdiction to hear and determine this cause, for the reason that, if said Commission is not such a "court" as this court is without power to enjoin, then the publication of said Commission's order of April 27th, 1907, was a necessary part of the enactment of the same as legislation, and this court is equally without power to enjoin legislation before it is enacted.

Wherefore, and for divers other good causes of demurrer appearing in said bill, this defendant demurs thereto, and humbly demands

the judgment of this court whether he shall be compelled to make any further answer to the said bill; and prays to be hence
267 dismissed with his costs and charges in this behalf most wrongfully sustained.

WILLIAM A. ANDERSON,
A. CAPERTON BRAXTON,
JNO. W. DANIEL,
Counsel for said Defendants.

We hereby certify that, in our opinion, the foregoing demurrer is well founded in point of law.

WILLIAM A. ANDERSON,
A. CAPERTON BRAXTON,
JNO. W. DANIEL,
Counsel for said Defendants.

STATE OF VIRGINIA, *City of Richmond, To-wit:*

Robert R. Prentis, being first duly sworn, deposes and says, that he is the defendant named in the foregoing demurrer; that said demurrer is not interposed for delay, and that the same is true in point of fact.

ROBERT R. PRENTIS.

Subscribed and sworn to before me this 3rd day of August, 1907.
JNO. S. EGGLESTON,
Notary Public for the City of Richmond, in the State of Virginia.

268 *Joint and Separate Plea of H. C. Stuart, Joseph E. Willard, and R. T. Wilson to Bill of Complaint.*

Filed August Rules, Monday, August 5th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

The joint and separate plea of H. C. Stuart, Joseph E. Willard, and R. T. Wilson, three of the defendants to the above styled suit, to the bill of complaint of the above named complainant.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in said plaintiff's bill to be true in such manner and form as the same are therein set forth and alleged, for plea to the whole of said bill, say that they have no personal, private, or individual connection with the subject matter of

this suit, but are only interested therein, or connected there
in so far as the said Stuart and Willard are two of the three mem
of the State Corporation Commission of Virginia and said Wi
is Clerk thereof; that the said State Corporation Commission
created and established, and its functions, powers, duties,
269 procedure prescribed and provided for, by the Constitu
and statutes of said State (of which this court will take j
cial notice) as will fully appear from Defendants' Exhibit
"Defendants' Exhibit B," "Defendants' Exhibit No. 1," and
fendants' Exhibit No. 2," all of which said exhibits are filed w
and made a part of the Answer of the defendants herein to the
heretofore awarded in this cause, requiring said defendants to
pear before the Honorable Jeter C. Pritchard, one of the Ju
of this Court, at the City of Asheville, in the State of North C
lina, on the 27th day of June, 1907, and show cause why an inj
tion *pendente lite* should not issue, as prayed for in said bill of c
plaint, and which said exhibits are hereby referred to, and made
of this plea as fully as if the same were herein set forth *in exte*
and are prayed to be taken and read as a part of this plea; that
said constitutional and statutory provisions are still in full force
effect, and have been in full force and effect continuously since
to the 1st day of January, 1904, and they represent the entire co
tutional and statutory provisions of said State upon the subjec
this plea or relating to the subject-matter of this suit, in effe
any time since the 1st day of January, 1904; that, on the 6th
of October, 1903, certain Rules of Order, Practice and Proce
before the said State Corporation Commission were duly made
prescribed by said Commission and entered upon the records o
proceedings, and also printed and distributed, all of which was
thorized by the aforesaid statutes, and was in accordance with
authority and provisions of said statutes; which said Rules of O
Practice and Procedure are filed as "Defendants' Exhibit No
with, and made a part of, the aforesaid Answer of the Defend
herein to the aforesaid Rule to show cause why an injunc
270 *pendente lite* should not be awarded in this suit, as pr
for in said bill of complaint, and which said Exhibit is he
referred to, and made a part of this plea as fully as if the same
herein set forth *in extenso*, and is prayed to be taken and read
part of this plea; that the proceedings before the said State C
ration Commission, which are referred to in said bill of compl
and in which the said Commission, on the 27th day of April, 1
entered its order in respect to the passenger rates of the plai
complained of in said bill of complaint, were taken and had b
the said Commission in strict conformity, in every respect, with
provisions, hereinbefore referred to, of the Constitution and sta
of the said State, and of the said Rules of Order, Practice and
cedure, all of which will more fully and at large appear from sec
"*Fifth*" and "*Eighth*" of the aforesaid Answer of the defend
herein to the aforesaid Rule to show cause why an injunction
dente lite should not be awarded in this suit, as prayed for in
bill of complaint, and from "Defendants' Exhibit No. 4"

"Defendants' Exhibit No. 5," which said Exhibits are filed with and made a part of the said Answer of the defendants herein to the aforesaid Rule, and which said Exhibits, and sections "*Fifth*" and "*Eighth*" of the said Answer to said Rule, (except insofar as said sections present any defense other than the sole defense interposed by and relied upon in this plea, viz: that this suit cannot be entertained by this court because of the inhibition of Sec. 720 of the Revised Statutes of the United States, hereinafter more particularly referred to,) are hereby referred to, and made
271 a part of this plea as fully as if the same were herein set forth *in extenso*, and are prayed to be taken and read as a part of this Plea: that the Commonwealth of Virginia was a formal plaintiff in the aforesaid proceedings before said Commission, referred to in said bill of complaint, and was required to be such, by the aforesaid laws of said State; that, under said laws, the said Commonwealth, as well as any defendant in said proceedings, may, as a matter of right, now appeal from said order of said Commission, of April 27th, 1907, to the Supreme Court of Appeals of Virginia; that, for the reasons next hereinafter pointed out, this honorable court is without power to enjoin the said Supreme Court of Appeals from hearing and deciding any such appeal, should the same be taken; that, by a certain Act of the Congress of the United States, which is printed and published as Section 720 of the Revised Statutes of the United States, it is provided that, "a writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except where such injunction may be authorized by any law relating to proceedings in bankruptcy"; that no injunction is, or ever has been, authorized to be granted in this suit "by any law relating to proceedings in bankruptcy"; that, as will appear from the aforesaid constitutional and statutory provisions of the said State, and also from the decisions and opinions of the Supreme Court of Appeals of said State, which is the highest court of, and the court of last resort in, the said State, of which said opinions and decisions, as well as of which said constitutional and statutory provisions, this court will take judicial notice, the
272 said State Corporation Commission of Virginia is a "court" of the said State, within the true meaning, purport, intent, and purview of the aforesaid Act of Congress, and was acting as such "court" continuously from the inception of the aforesaid proceedings before it, referred to in said bill of complaint, up to and including the entry of its aforesaid order of April 27th, 1907, relating to the passenger rates of the plaintiff, and was also so acting in publishing said order, in accordance with the aforesaid laws of the said State, and was also so acting at the time this suit was instituted, and at the time the restraining order was granted in this suit, and will and must so act in any and all steps which it may hereafter take in respect to matters and things referred to in said bill of complaint; and these defendants say that this honorable court is without power to grant any of the relief prayed for in the said bill of complaint, or to entertain this suit, because no relief can be granted the plaintiff herein without enjoining said State Corporation

Commission, which this court is forbidden to do by the aforesaid Act of Congress; all of which matters and things these defendants aver to be true, and they plead the same to the whole of the said plaintiff's bill, as aforesaid, and pray the judgment of this honorable court whether they ought to be required to make any other or further answer to the said bill, and pray to be hence dismissed, with their costs and charges in that behalf most wrongfully sustained.

JNO. W. DANIEL,
WILLIAM A. ANDERSON,
A. C. BRAXTON,
Counsel for said Defendants.

273 We hereby certify that, in our opinion, the foregoing plea is well founded in point of law.

JNO. W. DANIEL,
WILLIAM A. ANDERSON,
A. C. BRAXTON,
Counsel for Defendants.

STATE OF VIRGINIA, *City of Richmond, To-wit:*

H. C. Stuart, being duly sworn, deposes and says that he is one of the defendants named in the foregoing plea, and that the said plea is true in point of fact, and is not interposed for delay.

H. C. STUART.

Subscribed and sworn to before me, this 5th day of August, 1907.

JNO. S. EGGLESTON,
Notary Public for the City of Richmond, in the State of Virginia.

Petition for Modification of Interlocutory Injunction.

Filed August 29th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

274 To the Honorable Judges of the United States Circuit Court for the Eastern District of Virginia:

Complainant, the Atlantic Coast Line Railroad Company, respectfully represents:

1. That, heretofore, it has filed before the Honorable Judges of the Circuit Court of the United States for the Eastern District of

Virginia, its bill in equity against Beverley T. Crump, Henry C. Stuart and Joseph E. Willard, members of the State Corporation Commission of Virginia, and Richard T. Wilson, Clerk of the said Commission, in which bill it was prayed, for reasons therein fully and at large set forth, that a certain order, entered by the State Corporation Commission of Virginia on the 27th day of April, 1907, whereby a two cent per mile maximum passenger rate was imposed upon the complainant as the maximum charge it could make for carrying passengers upon its railroad in the State of Virginia, should be declared unreasonable, inoperative and void.

2. Complainant further says that, in response to the prayer of the said bill, the Honorable J. C. Pritchard, one of the judges of this Honorable Court, did on the 15th day of May, 1907, enter a restraining order against the publication and promulgation of said two cent per mile maximum passenger rate and, at the same time, caused a rule to be issued against said defendants to show cause, if any they could show, why said restraining order should not be continued and an injunction, *pendente lite*, granted in accordance with the prayer of this complainant, which said rule was made returnable at the City of Asheville, N. C., on the 27th day of June, 1907.

3. Complainant further shows that, thereafter, on the said 27th day of June, 1907, the defendants appeared at the City of
275 Asheville, N. C., in response to said rule, and filed their answer to the same, in which said answer the defendants maintained, upon the various grounds therein set up, that this Court was without jurisdiction to enter any order in the premises save an order dismissing the said proceedings for want of jurisdiction.

4. Complainant, however, says that, after full argument of and concerning all the matters of jurisdiction set forth in said answer, The Honorable J. C. Pritchard decided that the United States Circuit Court for the Eastern District of Virginia did have, and of right should maintain, jurisdiction of and concerning the matters and things complained of in said bill; and, in pursuance of said judgment and conclusion, an order was entered by him on the 10th day of July, 1907, granting to complainant an injunction, *pendente lite*, against the doing of the things complained of in said bill.

5. Complainant further says that, since said injunction, *pendente lite*, has been granted by this Honorable Court, conferences have been held with the representatives of the State of Virginia looking to a friendly arrangement pending the final determination of the issues set up in said bill whereby this complainant shall put into effect a two cent passenger rate in conducting its intra-state Virginia business, the same to remain in effect until said issues have been finally determined; and that these conferences reached a final conclusion as is evidenced by the following letters which have been exchanged between the Honorable Claude A. Swanson, the Governor of Virginia, and this complainant and other railway companies which have suits pending in this Court similar in character to the one instituted by complainant:

276 "COMMONWEALTH OF VIRGINIA,
GOVERNOR'S OFFICE,

RICHMOND, *August* 3, 1907.

Hon. Alexander Hamilton, Counsel for Atlantic Coast Line Railroad Company; Hon. Henry T. Wickham, Counsel for the Chesapeake and Ohio Railway Company; Messrs. Joseph I. Doran and Lucian H. Cocke, Counsel for Norfolk & Western Railway Company; Hon. Alfred P. Thom, Counsel for Southern Railway Company.

MY DEAR SIRS: As Governor of Virginia, and as such interested in all that appertains to the best interests of the State, I have been very much concerned in the pending suits and controversies affecting the establishment of passenger rates in the State of Virginia. The welfare of all would, in my opinion, be subserved by a satisfactory and amicable arrangement pending the litigation.

I realize that the material interests of Virginia and the wellbeing of her people are largely dependent upon the development and efficiency of her transportation lines.

The railroad companies and their interests are entitled to the same rights and the same consideration that other persons and their property are entitled to; no more and no less. The people of Virginia, as I am confident, concur with me in thinking that these companies are entitled to be given no special privileges and that they should not be subjected to any unjust burdens and discriminations.

Feeling this, and as Governor of Virgina interested in all of her varied interests, it is my earnest hope that this controversy may reach such a prompt and satisfactory solution as will be beneficial to all parties.

I have cordially co-operated with the Corporation Commission and their counsel in this matter, and am frank to say am in thorough accord with the Commission with respect to their authority and their action in the rate cases.

With the approval of the Corporation Commission I tender the following proposal for your consideration, and regard it as a fair arrangement pending the final adjudication of the controversy by the Supreme Court of the United States.

1. The passenger rates, rules and regulations with respect thereto, ordered by the Corporation Commission on April 27th, 1907, shall be put into operation not later than the first of October, 1907, and continued until the pending cases are finally adjudicated by the Supreme Court of the United States, both as to jurisdiction, and merits.

2. That the cases in the Circuit Court of the United States shall be hastened for decision in the Supreme Court of the United States as speedily as possible.

3. That the evidence that has already been introduced in the cases before the Corporation Commission shall be used as the evidence in the litigation in the Circuit Court of the United States if and
277 when heard on its merits, each party having the right to supplement it with additional evidence as to facts subsequently arising.

. That counsel representing the State and counsel representing railroads shall agree upon a method of procedure and proper ils necessary to carry these suggestions into effect, and to more rately and carefully define and protect the rights of the parties. feel sure the acceptance of these suggestions would be regarded he people of Virginia as an evidence of a disposition on the part he railroads to have a speedy determination of this question, and espect the wishes and judgment of the people of Virginia, and constituted authorities in this matter.

Very respectfully yours,

(Signed) CLAUDE A. SWANSON, *Governor.*

"RICHMOND, VA., *August 3rd*, 1907.

he Honorable Claude A. Swanson, Governor of Virginia.

EAR SIR: We beg to acknowledge your letter of this date bearing n a proposed adjustment, *pendente lite*, of the controversy over passenger rates adopted by the State Corporation Commission of ginia.

he spirit of your letter is appreciated by us and in a similar it we accept your suggestions, subject, however, as to your first gestion, to the necessity for us first to obtain the approval of the uit Court of the United States for the Eastern District of Vir- a to a modification of the interlocutory injunction awarded it in several cases. We will, however, make early application for modification and, as these injunctions were granted on our mo- , we anticipate no difficulty in having the rates in effect by the of October as mentioned by you.

'e note and have acted upon what you say in respect to an ar- gement as to the method of procedure and as to the details of ying this adjustment into effect.

Yours respectfully,

ALEXANDER HAMILTON,
H. T. WICKHAM,
JOS. I. DORAN,
(Signed) LUCIEN H. COCKE,
By JOS. I. DORAN,
ALFRED P. THOM."

nd now, Complainant, in pursuance of the understanding hed at said conference as evidenced by the letters hereinabove forth, prays this Honorable Court that an order may be entered reby Complainant may be authorized to put into effect on the 1st day of October, 1907, in its intra-state passenger service in the State of Virginia, a maximum passenger rate of two cents per mile, the same to remain in effect pending the suit which this petition is filed and until all of the issues set up in e proceedings shall have been finally passed upon by the Su-

preme Court of the United States, or shall, in some other way, have been finally disposed of.

[Seal of Atlantic Coast Line Railroad Company.]

ATLANTIC COAST LINE RAILROAD COMPANY,
By ALEXANDER HAMILTON,
First Vice President.

ALEXANDER HAMILTON,
WM. B. McILWAINE,
Counsel.

279 *Decree Modifying Interlocutory Injunction.*

Entered and Filed August 29th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

This cause came on this the 29th day of Aug., 1907, to be heard upon the bill of complaint of the Complainant with the exhibits therewith filed, upon the restraining order heretofore granted in response to the prayer of said bill, upon the injunction *pendente lite* heretofore granted on the 10th day of July, 1907, and upon the petition of the complainant, which is, by leave of the Court, this day filed.

And it appearing to the Court upon the reading of said petition and for the reasons therein set forth that it is the desire of said Complainant to put into effect in the State of Virginia for its intrastate passenger business a maximum rate of 2 cents per mile, which rate shall be effective on the 1st day of October, 1907, and shall continue in effect until the matters at issue in this cause shall be finally disposed of by the decision of the Supreme Court of the United States or otherwise finally determined.

280 Now this Court having considered the entire record, including said petition this day filed, doth adjudge, order and decree that the prayer of the said petition be and the same is hereby granted and to this end the injunction *pendente lite* heretofore granted in this cause on the 10th day of July, 1907, be and the same is now amended and modified to the end that authority is hereby given to the complainant to put into effect on the 1st day of October, 1907, a maximum passenger rate for its intrastate passenger business in the State of Virginia of 2 cents per mile, the same to obtain and be in effect until the issues in this cause shall have been finally passed upon and determined by the Supreme Court of the United States or otherwise finally disposed of and ended.

And by consent of all parties to this suit it is further adjudged, ordered and decreed that, in so putting into effect the said maximum passenger rate where, in the putting in of such rate, either the whole number of miles or mixed number with fractions does not result in a multiple of 5 the said complainant shall add or deduct a sufficient sum to make the amount of the fare the nearest multiple of 5; and also that in applying the said passenger rate the said complainant may charge and collect a minimum sum of 10 cents per passenger for any single haul and said complainant may charge and collect in addition to regular ticket rates the fixed sum of 10 cents from all cash fare passengers who had been afforded reasonable opportunity for purchasing tickets before boarding the train, provided that the conductor shall in all such cases deliver to such passengers a receipt for the excess collected and said complainant shall redeem said receipt if presented to any of its ticket offices within thirty days from the date of its issue;

281 And by like consent it is further adjudged, ordered and decreed that the Complainant shall carry free for said passengers paying the rate of fare as herein provided the same amount of baggage as it has been heretofore accustomed to do under its rules and regulations and for excess baggage it shall make the same charges that it has been accustomed to make without increasing the same or changing the regulations in connection therewith unless authorized by a further order of this Court.

J. C. PRITCHARD,
U. S. Circuit Judge.

Aug. 29th, 1907.

Setting down Demurrer of R. R. Prentis to be Argued.

Filed September Rules, Monday, September 2nd, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

Now comes the Complainant, the Atlantic Coast Line Railroad Company, by its Counsel in the above entitled cause and sets down the demurrer filed by Robert R. Prentis, one of the defendants herein, to be argued.

ALEXR. HAMILTON,
WM. B. McILWAINE,
Counsel for Complainant.

282 *Setting Down Joint and Separate Plea of Henry C. Stuart, Joseph E. Willard and R. T. Wilson to be Argued.*

Filed September Rules, Monday, September 2nd, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

Now comes the Complainant, the Atlantic Coast Line Railroad Company, by its Counsel in the above entitled cause and sets down the plea filed by Henry C. Stuart, Joseph E. Willard and R. T. Wilson, defendants herein, to be argued, on the ground that the said plea does not furnish any sufficient defense to the bill of complaint herein filed.

ALEXR. HAMILTON,
WM. B. McILWAINE,
Counsel for Complainant.

283 *Order Filing Plea of Res Adjudicata.*

Entered and Filed September 10th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

The Defendants by Counsel tendered to the Court a plea of *res adjudicata* to the Complainant's bill in this cause, and moved the Court to grant them leave to file said plea, whereupon it is ordered that said leave be given and the plea is accordingly filed.

And it is further ordered that leave be, and the same is hereby granted to the Complainant in this cause to set down the said plea to be argued, or take issue on said plea on or before the first day of the October Term 1907 of this Court.

J. C. PRITCHARD,
United States Circuit Judge.

September 10th, 1907.

284 *Plea of Res Adjudicata.*

Filed September 10th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump), H. C. STUART and JOSEPH E. WILLARD, Individually and as Constituting the State Corporation Commission of Virginia, and R. T. WILSON, Clerk of said Commission, Defendants.

The Joint and Several Plea of the Above Named Defendants to the Bill of Complaint of the Above Named Complainant.

These defendants respectively by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's said bill to be true in such manner and form as the same are therein set forth and alleged, for further plea to the whole of said bill, say as follows:

That at a lawful session of the Virginia State Corporation Commission held on the 27th day of April, 1907, in the rooms of said Commission in the State Capitol in the City of Richmond, Virginia, said Commission entered up the final order and judgment and made its final findings in the case then pending before said Commission known as The Virginia Passenger Rate Case, in which case the Commonwealth of Virginia was the plaintiff, and the said complainant here, and others were the defendants, which order and judgment and findings of said Commission were made pursuant to a certain notice to the complainant here, and the other steam railway companies operating lines of steam railway in the State of
285 Virginia, the defendants in said Passenger Rate Case, which notice, proceedings, and findings are set forth *in extenso* in Defendants' Exhibit No. 5, exhibited as a part of the Answer of these defendants, to the Rule heretofore awarded in this cause requiring these defendants and each of them to show cause before this Court or the Judge thereof in the United States Court Room at Asheville, North Carolina, at 10 o'clock on the 27th day of June, 1907, why an injunction *pendente lite* as prayed for in the said Bill should not be issued, to which exhibit now a part of the record in this cause, special reference is here made.

And these defendants aver that the said the State Corporation Commission of the State of Virginia which entered said order and judgment, and made said findings as set forth in said Exhibit No. 5, filed as part of said Answer, was at and before the said 27th of April, 1907, and has continued from said last mentioned date to be, and still is, and continues to be, a tribunal validly created and constituted under the Constitution and laws of said Commonwealth, and thereby duly invested and clothed with exclusive original juris-

diction and power in the matter of regulating and prescribing the charges which shall be made by the complainant and all other companies or corporations owning or operating railways in said State, for the transportation of passengers between points wholly within the territorial limits of Virginia, upon the lines of railway so owned or operated by any such company; and said Commission was, and is, and continues to be, at the date of, before, and since the said 27th of April, 1907, fully empowered by said Constitution and laws to control and regulate all such companies in respect to their duties to the public within the Commonwealth of Virginia, under and by virtue of the statutes, and sections of the Constitution of Virginia heretofore filed as part of the said Answer to said Rule as
286 Defendants' Exhibit No. 1, Defendants' Exhibit No. 2, and already made a part of the record in this cause.

And these defendants say farther that the said State Corporation Commission, as it was required by law that it should do, accorded to the complainant here, one of the defendants in said Passenger Rate Case, a full and complete hearing, all proper judicial process, and all due process of law, and every opportunity to make every defense, and to assert every right which said complainant might desire, or be advised to assert in said case against the proposed reduction of the rates and fares theretofore charged by the complainant for the transportation of passengers on its lines within the State of Virginia.

And these defendants farther say that the complainant here was duly made a party defendant in and to said Passenger Rate Case, appeared before said tribunal therein upon the hearing and trial thereof by counsel, filed its Answer therein, introduced all of the testimony which it desired, or was advised to be necessary or proper for making its defense therein, both of witnesses heard and examined orally before said Commission, and of documentary and other written testimony filed before said Commission as part of the case of the said defendant, who is now the complainant here.

And these defendants farther say that said tribunal (then consisting of Beverley T. Crump, said H. C. Stuart, and Joseph E. Willard), as it was its duty to do, proceeded and acted in all respects judicially in the hearing of said case, and in all of the proceedings had in connection therewith, and judicially investigated and considered all the questions and matters passed upon by said Commission in said case, or which were pertinent to the questions and matters presented therein, and in making its findings, and entering its order, and judgments aforesaid, as will appear from the
287 Exhibits filed as part of their aforesaid Answer to said Rule.

And these defendants farther say that the same identical matters, and every matter, and every question which is presented or raised by the Bill of Complaint here, and every ground of complaint or of defense against the proposed action of said Commission, which the complainant seeks to assert here against the justness and reasonableness or the legality of the rates adjudicated, fixed, and prescribed in said case by said State tribunal for the transportation of passengers by the complainant upon its lines in Virginia, was

presented, involved, raised, heard, tried, and passed upon, adjudicated, and finally decided by said State Corporation Commission of Virginia in due and legal manner and form in said Virginia Passenger Rate Case, in which the said Commonwealth was the plaintiff, and the complainant here was a defendant, and that said State Corporation Commission thereupon rendered and entered up its aforesaid final decision, order, and judgment upon the merits, upon the very same identical matters now sued upon in this cause.

Wherefore these defendants now here specially plead and rely upon said former judgment, in bar to the said plaintiff's present Bill, and humbly demand the judgment of this Honorable Court whether they shall be required to make any farther defense thereto, and respectfully pray to be hence dismissed with their costs and charges in this behalf sustained.

WILLIAM A. ANDERSON,
JNO. W. DANIEL,
A. CAPERTON BRAXTON,
Of Counsel for Defendants.

288 I hereby certify that in my opinion the foregoing plea is well founded in law.

WILLIAM A. ANDERSON,
Of Counsel for Defendants.

STATE OF VIRGINIA, *City of Richmond, To-wit:*

R. T. Wilson, being duly sworn deposes and says that he is one of the above named defendants, and that the foregoing plea is true in point of fact, and is not interposed for delay.

R. T. WILSON.

Subscribed and sworn to before me in my City aforesaid this the 10th day of September, 1903.

T. GRAY HADDON,
Notary Public in and for Richmond City.

289 *Setting Down Plea of Res Adjudicata to be Argued.*

Filed October Rules, Monday, October 7th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted defendant for Beverley T. Crump), and Others, Defendants.

Now comes the complainant, Atlantic Coast Line Railroad Company, by its counsel, in the above entitled suit, and sets down the Joint and Several Plea of *Res Adjudicata* filed by the above named

defendants, by leave of Court, on the 10th day of September, 1907, to be argued on the ground that the said Plea does not furnish any sufficient defense to the Bill of Complaint herein filed.

ALEXR. HAMILTON,
WM. B. McILWAINE,
Counsel for Complainant.

290 *Final Decree.*

Entered and Filed December 26th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted defendant for Beverley T. Crump), and Others, Defendants.

This cause came on this 26th day of December, 1907, to be heard upon the Bill of Complaint, with the exhibits therewith filed, and upon the papers formerly filed herein, including the special and limited appearance of the defendants at Rules, and their joint and separate answer to the Rule herein, returnable on June 27, 1907, and upon the proceedings and orders heretofore had and entered in this cause, and upon the demurrer of Robert R. Prentis (substituted defendant for Beverley T. Crump), which has been duly set down to be argued, and upon the joint and separate plea of Henry C. Stuart, Joseph E. Willard, and R. T. Wilson, three of the defendants in the above styled suit, filed in this cause on the 5th day of August, 1907, which said plea has also been duly set down to be argued, and upon the joint and several plea of *res adjudicata* filed by leave of court on the 10th day of September, 1907, in this cause by Robert R. Prentis (substituted defendant for Beverley T. Crump), Henry C. Stuart, and Joseph E. Willard, individually and
291 as constituting the State Corporation Commission of Virginia, and R. T. Wilson, Clerk of said Commission, which said plea of *res adjudicata* has also been duly set down to be argued.

And this cause having been fully argued by counsel, and the court, having fully considered the record herein and the argument of counsel, and, being of the opinion that the demurrer of said defendant Robert R. Prentis is not well founded in law, it is now adjudged, ordered and decreed that the said demurrer be, and the same is, hereby over-ruled;

And the court, being further of the opinion that the joint and separate plea of the said Henry C. Stuart, Joseph E. Willard and R. T. Wilson, set down to be argued as aforesaid, is also not sufficient in law, the court doth now further adjudge, order and decree that the said plea be, and the same is, hereby over-ruled as not being good in law;

And the court, being further of the opinion that the joint and several plea of *res adjudicata* of Robert R. Prentis (substituted defendant for Beverley T. Crump), Henry C. Stuart, and Joseph E. Willard, individually and as constituting the State Corporation Commission of Virginia, and R. T. Wilson, Clerk of said Commission, set down to be argued as aforesaid, is also not sufficient in law, the court doth now further adjudge, order and decree that the said plea of *res adjudicata* be, and the same is, hereby over-ruled as being not good in law;

And the said Robert R. Prentis, standing upon his demurrer, and the said Henry C. Stuart, Joseph E. Willard, and R. T. Wilson, standing upon the said joint and separate plea filed in this cause on the 5th day of August, 1907, and the said Robert R. Prentis (substituted defendant in the place of Beverley T. Crump), Henry C. Stuart, and Joseph E. Willard, individually and as con-
292 stituting the State Corporation Commission of Virginia, and R. T. Wilson, Clerk of said State Corporation Commission of Virginia, standing upon said plea of *res adjudicata* filed in this cause on the 10th day of September, 1907, and upon the joint and separate Answer of the defendants to said Rule returnable on June 27th, 1907, and each and all of them declining to answer the bill, it is now, upon consideration thereof, finally adjudged, ordered and decreed that the Bill of Complaint in this cause be, and the same is, hereby sustained and taken for confessed;

And this court, being of opinion that the order of the State Corporation Commission of Virginia of the 27th day of April, 1907, complained of in the Bill, violates the rights of the Complainant under the Constitution of the United States and is in contravention thereof, as alleged in the bill, and that accordingly the Complainant is entitled to the relief prayed for in said Bill, as set forth therein, doth so adjudge, order and decree, and doth further adjudge, order and decree that the interlocutory injunction awarded in this cause on the 10th day of July 1907, be, and the same is, hereby made perpetual, and accordingly:

1. That the defendants Robert R. Prentis, Henry C. Stuart, and Joseph E. Willard, individually and as constituting the State Corporation Commission of Virginia, and each and all of their successors in office, each and every of their servants, agents and employees, be, and they hereby are, perpetually restrained and enjoined from publishing, or having published, in any newspaper published in the City of Richmond, Virginia, as against the Complainant herein, the general order of the State Corporation Commission of Virginia bearing date the 27th day of April 1907, in respect to passenger rates, in the bill in this cause mentioned, and from taking
293 any other step or steps whatsoever under the constitution or laws of the State of Virginia, or otherwise, to enforce against the said Complainant the requirements of said order.

2. That the defendant Richard T. Wilson, Clerk of the State Corporation Commission of Virginia, his successors in office, and his servants, agents and employés, be, and they hereby are, perpetually restrained and enjoined from publishing, or having published, as

against said Complainant herein, said order of the State Corporation Commission of Virginia in any newspaper published in the City of Richmond, Virginia.

3. That the owners, proprietors and managers of any and all newspapers published in the City of Richmond, Virginia and the agents of any such owners, proprietors or managers of any such newspapers published in the City of Richmond, Virginia, be, and they and each and every one of them are, hereby perpetually enjoined and restrained from publishing or having published, as against the Complainant herein, under the direction of the State Corporation Commission of Virginia, or of the Clerk thereof, said general order of said State Corporation Commission of Virginia, entered on the 27th day of April, 1907.

4. That the bonds heretofore given by the complainant in this cause be, and the same hereby are, released and canceled, and the Complainant and the sureties thereon are hereby released and discharged from any and all liability in respect thereto.

5. That a writ of injunction issue out of this Court, and under the seal thereof, directed to the said defendants, commanding, enjoining and restraining them, as hereinbefore set forth, which injunction shall be perpetual, save as is hereinafter provided.

294 But it is further adjudged, ordered and decreed that the defendants, members of, and the clerk to, the said Corporation Commission of Virginia, respectively, as set forth in these proceedings, may hereafter, in the event that the circumstances and conditions shall have changed so that the rates fixed in the order entered by said Commission on the 27th day of April 1907, shall not, under such changed circumstances and conditions, be in violation of the constitutional rights of the Complainant invoked in the Bill of Complaint in this suit, apply to this court by such proper proceedings as they may be advised for a further order in that behalf;

And it is further adjudged, ordered and decreed that the Complainant recover of the defendants its costs in this behalf expended, to be taxed by the Clerk.

J. C. PRITCHARD.
U. S. Circuit Judge.

December 26th, 1907.

295 *Injunction.*

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump), HENRY C. STUART, JOSEPH E. WILLARD, and R. T. WILSON, Defendants.

The President of the United States of America to Robert R. Prentis, Henry C. Stuart, Joseph E. Willard, and R. T. Wilson; and to their agents, servants and employees and successors in office, and each and every of them; and to the owners, proprietors and managers of all newspapers published in the City of Richmond, Virginia, and each of them, Greeting:

Whereas the Honorable Judge of the Circuit Court of the United States for the Eastern District of Virginia, has on the 26th day of December, 1907, made perpetual the interlocutory injunction awarded in the above-styled cause on the 10th day of July, 1907.

Now, therefore:

1. The defendants Robert R. Prentis, Henry C. Stuart, and Joseph E. Willard, individually and as constituting the State Corporation Commission of Virginia, and each and all of their successors in office, each and every of their servants, agents and employees be, and they hereby are, perpetually restrained and
295 enjoined from publishing, or having published, in any newspaper published in the City of Richmond, Virginia, as against the Complainant herein, the general order of the State Corporation Commission of Virginia bearing date the 27th day of April, 1907, in respect to passenger rates, in the bill in this cause mentioned, and from taking any other step or steps whatsoever under the constitution or laws of the State of Virginia, or otherwise, to enforce against the said Complainant the requirements of said order.

2. The defendant Richard T. Wilson, Clerk of the State Corporation Commission of Virginia, his successors in office and his servants, agents and employees, be, and they hereby are, perpetually restrained and enjoined from publishing or having published, as against said Complainant herein, said order of the State Corporation Commission of Virginia in any newspaper published in the City of Richmond, Virginia.

3. The owners, proprietors and managers of any and all newspapers published in the City of Richmond, Virginia, and the agents of any such owners, proprietors or managers of any such newspaper published in the City of Richmond, Virginia, be and they and each and every one of them are, hereby perpetually enjoined and restrained from publishing or having published, as against the Complainant herein, under the direction of the State Corporation Commission of Virginia, or of the Clerk thereof, said general order of

said State Corporation Commission of Virginia, entered on the 27th day of April, 1907.

Hereof fail not under penalty of the law thence ensuing.

297 Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at the City of Richmond, Virginia, in said District, this Thirteenth day of January, in the year of our Lord one thousand nine hundred and eight, and of our Independence the 132nd year.

[Seal of United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Marshal's Return.

Executed January 13th, 1908, by delivering in person in the City of Richmond, Va., to Robert R. Prentis, Henry C. Stuart, Joseph E. Willard, R. T. Wilson and to Joseph Bryan, he being the President of the Richmond Times-Dispatch Co., a newspaper published in the City of Richmond, Va., and to Alfred B. Williams, he being the President of the News-Leader, a newspaper published in the City of Richmond, Va., and to A. R. Holderby, Jr., he being the Secretary-Treasurer and likewise a director of the Evening Journal, a newspaper published in the City of Richmond, Va., to each of them a true copy of this injunction order.

MORGAN TREAT,
United States Marshal.

298 *Petition for Appeal.*

Filed December 26th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump), HENRY C. STUART, JOSEPH E. WILLARD, and R. T. WILSON, Defendants.

To the Honorable J. C. Pritchard, Judge of said Court:

Your petitioners, the above-named defendants, and each of them, individually, and also in the capacity in which they are respectively impleaded in this cause, respectfully represent and complain that, in the record and proceedings had in said cause, and also in the final decree entered in said cause, on the 26th day of December, 1907, by

the said court at its present term, manifest error hath happened and been committed, to the great injury and damage of said defendants.

Wherefore, the said defendants, and each of them, individually and also in the capacity in which they are respectively impleaded in said cause, conceiving themselves aggrieved by said error, as aforesaid, hereby respectfully appeal from said decision and decree to the Supreme Court of the United States; and they pray that this, their said appeal, may be allowed, and that a transcript of the record, papers, and proceedings, upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States; and also that an order be made fixing the amount of
299 security which said defendants shall give and furnish upon such appeal.

Accompanying this petition are the assignments of error required by the rules of the said last-named court, and said defendants are ready to give and furnish the bond likewise required by said rules.

And your petitioners will ever pray, etc.

Dated December 26th, 1907.

WILLIAM A. ANDERSON,
Richmond, Va.,
A. C. BRAXTON,
Richmond, Va.,
JOHN W. DANIEL,
Lynchburg, Va.,
Attorneys and Solicitors for the said Defendants and Appellants.

300 *Assignment of Errors.*

Filed December 26th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump), HENRY C. STUART, JOSEPH E. WILLARD, and R. T. WILSON, Defendants.

Come now the said defendants, and each of them individually, and also in the capacity in which they are respectively impleaded in this cause, and file the following assignment of errors along with and accompanying their petition for appeal from the final decree entered by this Honorable Court, at its present term, on the 26th day of December, 1907, in the above-entitled cause, upon which errors they and each of them will rely, upon their said appeal:

First.

That the court erred in assuming, asserting and retaining jurisdiction of said defendants, and of said cause.

Second.

That the court erred in not sustaining the validity of the several constitutional and statutory provisions of the laws of Virginia, creating the State Corporation Commission of Virginia, and prescribing its powers and modes of procedure, which said provisions are set forth in the record of said cause, and which were, by the complain-
301 ant in said cause, "claimed to be in contravention of the Constitution of the United States."

Third.

That the court erred in finding and adjudging that the "law" of the Commonwealth of Virginia, embodied in and created by the order of the State Corporation Commission of Virginia, dated April 27th, 1907, and set forth in the record of said cause, was, as "claimed to be," by the complainant in said cause, "in contravention of the Constitution of the United States."

Fourth.

That the court erred in overruling the demurrer to the bill in said cause.

Fifth.

That the court erred in overruling the joint and separate plea filed by three of the defendants in said cause on August 5th, 1907.

Sixth.

That, if the court had jurisdiction of said cause, and of said defendants, then it erred in overruling the plea of *Res Adjudicata* filed by the defendants in said cause.

Seventh.

That the court erred in not making, rendering and entering a decree in favor of the said defendants, and against the said complainant.

The foregoing specific assignments of error cover, it is believed, the requirements of the Rule under which t- are filed; but the said defendants, as Appellants, by th- counsel, in view of the im-
302 portance of this cause and t- range of subjects necessarily involved in its proper consideration and determination, will pray the Honorable, the Supreme Court of the United States, for leave to discuss, at the hearing, all the subjects involved in said appeal, and not to confine them to the specific points designated above.

Wherefore, the said defendants, as Appellants, pray that the final decision and decree of the said court in this cause be reversed by the Supreme Court of the United States, and the said Circuit Court of the United States for the Eastern District of Virginia be directed

to enter an order, dismissing this cause, at the costs of said complainant.

Dec. 26th, 1907.

WILLIAM A. ANDERSON,
A. C. BRAXTON,
JOHN W. DANIEL,
Attorneys and Solicitors for the said Defendants and Appellants.

303 *Order Allowing Appeal and Fixing Amount of Bond.*

Entered and Filed December 26th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

Upon motion of William A. Anderson, A. Caperton Braxton and John W. Daniel, Esquires, counsel for defendants, and on filing petition of Henry C. Stuart, Joseph E. Willard, Robert R. Prentis, and R. T. Wilson, individually and also in the capacity in which they are respectively herein impleaded, for an order allowing an appeal, together with an assignment of errors accompanying the said petition,

It is ordered, on this, the 26th day of December, 1907, that an appeal be, and is hereby in open court allowed to the Supreme Court of the United States from the final order and decree entered herein on the 26th day of December, 1907, at this term of this court, perpetuating the injunction heretofore awarded against said defendants; that the amount of the bond upon said appeal be, and hereby is, fixed at the sum of One Thousand Dollars; and that a certified transcript of the record and proceedings herein be forthwith transmitted to the Supreme Court of the United States.

December 26th, 1907.

J. C. PRITCHARD,
U. S. Circuit Judge.

304 *Appeal Bond.*

Filed January 14th, 1908.

Know all men by these presents, That we, Richard T. Wilson of Richmond, Virginia, as principal, and Virginia Trust Company, as surety, are held and firmly bound unto Atlantic Coast Line Railroad Company in the full and just sum of One Thousand Dollars

to be paid to the said Atlantic Coast Line Railroad Company, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated the 14th day of January, in the year of our Lord one thousand nine hundred and eight.

Whereas, lately at a Circuit Court of the United States for the Eastern District of Virginia, in a suit depending in said Court, *between* Atlantic Coast Line Railroad Company, is Complainant, and Robert R. Prentis (Substituted defendant for Beverley T. Crump), Henry C. Stuart, Joseph E. Willard and Richard T. Wilson are Defendants, a decree was rendered against the said Robert R. Prentis, (Substituted defendant for Beverley T. Crump), Henry C. Stuart, Joseph E. Willard, individually, and as constituting the State Corporation Commission of Virginia, and Richard T. Wilson, Clerk of the said State Corporation Commission of Virginia, and the said Robert R. Prentis, (Substituted defendant for Beverley T. Crump), Henry C. Stuart, Joseph E. Willard, individually, and as constituting the State Corporation Commission of Virginia, and Richard T. Wilson, Clerk of the said State Corporation Commission of Virginia, having obtained an appeal to reverse the decree in the
305 aforesaid suit, and a citation directed to the said Atlantic Coast Line Railroad Company citing and admonishing it to be and appear at a Supreme Court of the United States, at the city of Washington, on the day in the said citation mentioned:—

Now, the condition of the above obligation is such, That if the said Robert R. Prentis, (Substituted defendant for Beverley T. Crump), Henry C. Stuart, Joseph E. Willard and Richard T. Wilson shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

RICHARD T. WILSON. [SEAL.]
VIRGINIA TRUST CO.,
By L. D. AYLETT, *Sec'y.*

[Seal of Virginia Trust Co.]

Sealed and delivered in presence of

JOSEPH P. BRADY,
Clerk of the U. S. Circuit Court
for the Eastern District of Virginia.

Approved by—

J. C. PRITCHARD,
United States Circuit Judge.

306 *Citation.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Atlantic Coast Line Railroad Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the city of Washington, on the 10th day of February, A. D. 1908, pursuant to an appeal, duly allowed by the Circuit Court of the United States for the Eastern District of Virginia, and filed in the clerk's office of said Court on the 26th day of December, A. D. 1907; in a cause wherein Robert R. Prentis, (Substituted defendant for Beverley T. Crump), Henry C. Stuart and Joseph E. Willard, individually, and as constituting the State Corporation Commission of Virginia, and R. T. Wilson, Clerk of said State Corporation Commission of Virginia, are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable J. C. Pritchard, Judge of the Circuit Court of the United States for the Eastern District of Virginia, this 14th day of January, in the year of our Lord one thousand nine hundred and eight, and of our Independence the 132nd year.

J. C. PRITCHARD,
United States Circuit Judge.

Service of the above citation is hereby admitted this 18th day of January, 1908.

WM. B. McILWAINE,
Attorney for Appellee.

(Petersburg, Virginia.)

307 *Order Transmitting Record.*

And, thereupon, it is ordered by the Court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the Supreme Court of the United States and the same is transmitted accordingly.

Teste:

JOSEPH P. BRADY, *Clerk.*

Certificate of Clerk.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, Joseph P. Brady, Clerk of the Circuit Court of the United States for the Eastern District of Virginia, in the Fourth Judicial Circuit, do certify that the above and foregoing is a full, true and

correct transcript of the record and proceedings of said Circuit Court, together with all things thereunto relating, in the therein entitled cause.

In testimony whereof, I hereunto set my hand and affix the seal of said Circuit Court, at the City of Richmond, Virginia, this 3d day of February, A. D. 1908.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Endorsed on cover: File No. 21,009. E. Virginia C. C. U. S. Term No. 270. Robert R. Prentis, Henry C. Stuart, and Joseph E. Willard, individually and as constituting the State corporation commission of Virginia, *et al.*, appellants, *vs.* Atlantic Coast Line Railroad Company. Filed February 10th, 1908. File No. 21,009.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 271.

ROBERT R. PRENTIS, HENRY C. STUART, AND JOHN S. WILLARD, INDIVIDUALLY AND AS CONSTITUTING THE STATE CORPORATION COMMISSION OF VIRGINIA, AND R. T. WILSON, CLERK OF THE STATE CORPORATION COMMISSION OF VIRGINIA, APPELLANTS,

vs.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

FILED FEBRUARY 19, 1906.

(21,010.)

(21,010.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 271.

ROBERT R. PRENTIS, HENRY C. STUART, AND JOSEPH E. WILLARD, INDIVIDUALLY AND AS CONSTITUTING THE STATE CORPORATION COMMISSION OF VIRGINIA, AND R. T. WILSON, CLERK OF THE STATE CORPORATION COMMISSION OF VIRGINIA, APPELLANTS,

vs.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States to The Chesapeake and Ohio Railway Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the city of Washington, on the 10th day of February, A. D., 1908, pursuant to an appeal, duly allowed by the Circuit Court of the United States for the Eastern District of Virginia, and filed in the clerk's office of said Court on the 26th day of December, A. D., 1907; in a cause wherein Robert R. Prentis, (Substituted defendant for Beverley T. Crump), Henry C. Stuart and Joseph E. Willard, individually, and as constituting the State Corporation Commission of Virginia, and R. T. Wilson, Clerk of said State Corporation Commission of Virginia, are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable J. C. Pritchard, Judge of the Circuit Court of the United States for the Eastern District of Virginia, this 14th day of January, in the year of our Lord one thousand nine hundred and eight, and of our Independence the 132nd year.

J. C. PRITCHARD,
United States Circuit Judge.

Service of the above citation is hereby admitted this 15th day of January, 1908.

H. T. WICKHAM,
Attorney for Appellee, Richmond, Virginia.

b [Endorsed:] No. 579. Circuit Court of the U. S. Eastern District of Virginia. In Equity. Chesapeake and Ohio Railway Company, Complainant, *vs.* Robert R. Prentis, (Substituted defendant for Beverley T. Crump), and others, Defendants. Citation. Filed this —— day of ——, 190–. ——— ———, Clerk.

1 *Transcript of Record.*

UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

At a Circuit Court of the United States for the Eastern District of Virginia, begun and held at the Court Rooms in the Custom House, in the City of Richmond, Virginia, on the first Monday in October, being the seventh day of the same month, in the year of our Lord one thousand nine hundred and seven.

Present: The Honorable J. C. Pritchard, Judge of the Circuit Court of the United States for the Eastern District of Virginia.

Among other were the following proceedings, to-wit:

In Equity.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump), HENRY C. STUART and JOSEPH E. WILLARD, Individually and as Constituting the State Corporation Commission of Virginia, and RICHARD T. WILSON, as Clerk of the State Corporation Commission of Virginia, and the TIMES-DISPATCH COMPANY, a Corporation Organized and Existing under the Laws of the State of Virginia, Defendants.

2 *Bill of Complaint.*

Filed May 15th, 1907.

In the Circuit Court of the United States for the Eastern Judicial District of Virginia, in the Fourth Circuit, Sitting in Equity at Richmond, Virginia.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
vs.
BEVERLEY T. CRUMP, HENRY C. STUART, and JOSEPH E. WILLARD, Individually and as Constituting the State Corporation Commission of the State of Virginia; RICHARD T. WILSON, as Clerk of the State Corporation Commission of the State of Virginia, and the TIMES-DISPATCH COMPANY, a Corporation Organized and Existing under the Laws of the State of Virginia.

3 To the Honorable Judges of the Circuit Court of the United States for the Eastern Judicial District of Virginia, in the Fourth Circuit, sitting in equity at Richmond, Virginia:

The complainant, The Chesapeake and Ohio Railway Company, a corporation created, organized and existing under the laws of the State of Virginia, and a citizen and resident of said State of Virginia, having its principal office and place of business in the city of Richmond, State of Virginia, brings this, its bill of complaint, against the State Corporation Commission of Virginia, Beverley T. Crump, the Chairman, and Henry C. Stuart and Joseph E. Willard, the associate members thereof, individually, and who are now acting as the Corporation Commission of the State of Virginia under and by virtue of the Constitution of the State of Virginia, and the acts of the General Assembly of the State of Virginia passed in pursuance thereof, Richard T. Wilson, Clerk of the State Corporation Commission of the State of Virginia, and the "Times-Dispatch Company," a corporation organized and existing under the laws of the State of Virginia. All of the said defendants above-named are citizens and residents of said State of Virginia; the said Beverley T. Crump, Joseph E. Willard and Richard T. Wilson are residents of the Eastern Judicial District of Virginia; the defendant, Henry C. Stuart, is a resident of the

Western District of Virginia, and the defendant, the "Times-Dispatch Company," is a corporation duly organized and existing under the laws of the State of Virginia, having its principal office and place of business in the city of Richmond, and a resident of the Eastern District of Virginia. The said defendants, Beverley T. Crump, Henry C. Stuart and Joseph E. Willard are duly chosen, qualified and acting members of, and constitute the State Corporation Commission of Virginia, the principal office of which Commission is fixed by law at the city of Richmond, the seat of government of said State in the Eastern Judicial District of Virginia.

Your complainant respectfully shows unto this Honorable Court as follows:

4 First.

1. That it owns and operates a system of railroads in the States of Virginia, West Virginia, Kentucky and Ohio, aggregating in main line and branches as of June 30, 1905, a total track mileage of 1707.9 miles, of which mileage

It owns	1135.4 miles.
Operates through a practical total stock ownership	348.0 "
Operates under lease	25.0 "
Operates jointly under trackage contracts	199.5 "
Total	1707.9 "

That its total mileage in Virginia is as follows:

Main Line Mileage.			
From Fort Monroe to West Virginia State Line, via Charlottesville	305.2 miles.		
Richmond, via Lynchburg, to Clifton Forge (R. & A.)	229.9 "		
		535.1	"
Branch Line Mileage.			
Bremo to Rosney	20.8 "		
Warren to Alberene	11.1 "		
South Glasgow to Glasgow	1.3 "		
Loch Laird to East Lexington	10.5 "		
Eagle Mountain to Newcastle	26.4 "		
Covington to Hot Springs	24.7 "		
		94.8	"
		629.9	"
Leased Line Mileage.			
Gordonsville to Orange	9.0 miles		
Mineral to Sulphur Mines	4.0 "		
		13.0	"
		642.9	"

5 Joint Track Mileage.

Orange to Alexandria	77.8	miles.	
Alexandria to District of Columbia	4.7	"	
East Lexington to Lexington	1.0	"	
Glosgow to Loch Laird	8.3	"	
			91.8 miles.
			734.7 "

That its mileage owned and operated as of June 30, 1906, is as follows:

It owns	1,169.8 miles.
Operates through a practical total stock ownership	432.6 "
Operates under lease	25.0 "
Operates jointly under trackage contracts	199.5 "
Total	1,826.9 "

That its total mileage in Virginia is as follows:

Main Line Mileage.

From Fort Monroe to West Virginia State Line, via Charlottesville	307.5	miles.	
Richmond, via Lynchburg, to Clifton Forge (R. & A.)	229.9	"	
			537.4 "

Branch Line Mileage.

Bremo to Rosney	20.8	"	
Warren to Alberene	11.1	"	
South Glasgow to Glasgow	1.3	"	
Loch Laird to East Lexington	10.5	"	
Eagle Mountain to Newcastle	26.4	"	
Covington to Hot Springs	24.7	"	
			91.8 "
			632.2 "

6 Leased Line Mileage.

Gordonsville to Orange	9.0	miles.	
Mineral to Sulphur Mines	4.0	"	
			13.0 miles.
			645.2 "

Joint Track Mileage.

Orange to Alexandria	77.8	"	
Alexandria to District of Columbia	4.7	"	
East Lexington to Lexington	1.0	"	
Glasgow to Loch Laird	8.3	"	
			91.8 "
			737.0 "

2. That it was erected into a corporation under and by virtue of the laws of the State of Virginia, on the first day of July, 1878, as follows, to-wit: That on said first day of July, 1878, there were effective and in force in the State of Virginia, the following General Statutes, appearing as sections 44, 45, 46 and 47 of chapter 61 of the Code of Virginia of 1873, which said sections are in the words and figures following:

"44. If a sale be made under a deed of trust or mortgage executed by a company on all of its works and property, and there be a conveyance pursuant thereto, such sale and conveyance shall pass to the purchaser at the sale, not only the works and property of the company as they were at the time of making the deed of trust or mortgage, but any works which the company may, after that time and before the sale, have constructed, and all other property of which it may be possessed at the time of the sale, other than debts due to it. Upon such conveyance to the purchaser, the said company shall *ipso facto* be dissolved. And the said purchaser shall forthwith be a corporation, by any name which may be set forth in the said conveyance, or in any writing signed by him and recorded in the Court in which the conveyance shall be recorded.

45. The corporation created by or in consequence of such sale and conveyance shall succeed to all such franchises, rights and
7 privileges, and perform all such duties as would have been had or should have been performed by the first company but for such sale and conveyance; save only that the corporation so created shall not be entitled to the debts due to the first company and shall not be liable for any debts of, or claims against, the said first company which may not be expressly assumed in the contract of purchase, and that the whole profits of the business done by such corporation shall belong to the said purchaser and his assigns. His interest in the corporation shall be personal estate, and he or his assigns may create so many shares of stock therein as he or they may think proper not exceeding together the amount of stock in the first company at the time of the sale, and assign the same in a book to be kept for that purpose. The said shares shall thereupon be on the footing of shares in joint stock companies generally, except only that the first meeting of the stockholders shall be held on such day and at such place as shall be fixed by the said purchaser, of which notice shall be published for two weeks in a newspaper.

46. The debts due to and by, and claims against, the said first company mentioned in the preceding section, shall be subject to the provisions contained in the thirty-first section of the fifty-sixth chapter, and the said company, notwithstanding its dissolution aforesaid, shall, as to said debts and claims, have the power and perform the duties prescribed by that section.

47. A sale of the works and property of a company, made under decree of a court having competent jurisdiction, shall be held by the purchaser thereof, subject to all the provisions of the three preceding sections so far as the same may be applicable to such sale. The Board of Public Works shall be and are hereby authorized and directed to attend, either in person or by agent duly appointed by said Board,

the sale of any work of internal improvement in which the State is a stockholder, or otherwise interested, whether such sale be made by virtue of mortgage, judgment or other lien, and that said Board be authorized to purchase, on the part and for the use of the Commonwealth, any such public work so offered for sale, if, in the judgment of said Board of Public Works, the interest of the State would be protected or promoted thereby. No sale of any work of internal improvement, in which the State is a stockholder, or otherwise interested, shall take place whether by virtue of mortgage, trust, judgment, decree or other lien, without ninety days' notice in the
8 principal newspapers in the city of Richmond, and in the local newspapers of the county wherein such improvement is situated, and further, without ninety days' notice served on the Board of Public Works of this State by the person or persons authorized to make the sale."

That pursuant to said General Statutes and to those certain judgments, orders and decrees referred to in the deed next hereinafter mentioned, a conveyance by deed was made from Williams C. Wickham, Special Commissioner, to A. S. Hatch, C. P. Huntington, A. A. Low, Isaac Davenport, Jr., and John Castree, a Committee of Purchase and Reorganization for themselves and others, on said first day of July, 1878, and that under and pursuant thereto, The Chesapeake and Ohio Railway Company became and was duly created and erected into a corporation, and has since existed and now is existing and doing business as such corporation, succeeding to all such rights and privileges and subject to all such duties as would have been had or should have been performed by its predecessor company but for such sale and conveyance to the extent as authorized under, and by virtue, of said statutes last above set forth and those certain acts of the General Assembly of the State of Virginia hereinafter mentioned, to-wit:

An Act incorporating the stockholders of the Louisa Railroad Company, passed February 18, 1836;

An Act to change the name of the Louisia Railroad Company, to guarantee the bonds of the Virginia Central Railroad Company and for other purposes, passed February 2, 1850;

An Act to incorporate the Covington and Ohio Railroad Company, passed February 26, 1866;

An Act to provide for the completion of a line or lines of railroad from the waters of the Chesapeake to the Ohio River, passed March 1, 1867;

An Act for the extension and completion of the Chesapeake and Ohio Railroad, in force March 24, 1871;

All of which acts enter into and form a part of the charter of The Chesapeake and Ohio Railway Company.

That since the organization of the said The Chesapeake and Ohio Railway Company, on the first day of July, 1878, as above set forth, the following statutes have been passed by the General Assembly of Virginia, and enter into and form a part of its charter, namely:

9 An Act to enable The Chesapeake and Ohio Railway Company to increase its capital stock for certain purposes, approved January 25, 1879;

An Act to authorize The Chesapeake and Ohio Railway Company to construct and work a branch of its line of railroad from a point near Hanover Junction to Deepwater on the Chesapeake Bay near Piankatank, or elsewhere, approved March 4, 1880;

An Act to authorize the county of Elizabeth City to procure and grant the right of way for a railroad through said county from Newport News to the centre of the channel of Mill Creek, approved February 21, 1882;

An Act to authorize the issue of bonds and stock by The Chesapeake and Ohio Railway Company, approved February 13, 1888;

An Act authorizing the union of The Chesapeake and Ohio Railway Company and the Richmond and Alleghany Railway Company by purchase, consolidation or merger, and the issue of additional stock and bonds for that purpose, approved December 18, 1889;

An Act to authorize the Chesapeake and Ohio Railway Company to give deeds of trust or mortgage upon its works and property, or any part or branches thereof, approved December 18, 1889;

An Act to authorize the Chesapeake and Ohio Railway Company to acquire or guarantee the stock and bonds of any steamship company or companies, now or hereafter running to or from any port or ports in Virginia, approved December 18, 1889;

An Act to authorize the Chesapeake and Ohio Railway Company to aid in the development of business along its lines by acquiring or guaranteeing the stock and bonds of mining, manufacturing and other industrial enterprises connected therewith, approved December 18, 1889;

An Act to enable The Chesapeake and Ohio Railway Company to acquire, or acquire an interest in, extensions or additions to its system of railroads outside this State, and to create stock and deeds of trust or mortgages, or to guarantee bonds for that purpose, approved February 13, 1890;

An Act to authorize the Chesapeake and Ohio Railway Company to construct or acquire branches or extensions and to issue its mortgage bonds thereon, or to hold stock in and guarantee the bonds of corporations owning such branches or extensions, approved December 22, 1891;

10 An Act to authorize the issue of additional bonds and stock by The Chesapeake and Ohio Railway Company, and defining the purposes to which they may be applied, approved December 22, 1891;

An Act to authorize any railroad company or companies owning any line or lines of railway which The Chesapeake and Ohio Railway Company may have the lawful right to acquire, to lease, convey or otherwise transfer the same to said Chesapeake and Ohio Railway Company, approved February 16, 1892;

An Act to authorize the union of the Chesapeake and Ohio Railway Company and the Buckingham Railroad Company, by lease, purchase, consolidation, merger or otherwise, in accordance with the

terms of any contract, which may have been, or may be, entered into by and between said companies, approved February 19, 1894;

An Act to authorize The Chesapeake and Ohio Railway Company to extend its line of transportation in the City of Norfolk, Virginia, and to enjoy wharf, warehouse and all other terminal facilities therein, approved February 7, 1894;

An Act to amend and re-enact an Act entitled an Act to authorize The Chesapeake and Ohio Railway Company to construct, operate and maintain a branch or connecting line between its railroads in the counties of Goochland and Henrico, or either of them, approved January 31, 1890, so as, in addition to the powers authorized by said Act, to enable The Chesapeake and Ohio Railway Company to construct, maintain and operate additional lines of railway in, through, or by the city of Richmond in conformity with any agreement which may hereafter be entered into between the Council of the city of Richmond and said Chesapeake and Ohio Railway Company, and in the county of Henrico, with power to the said Chesapeake and Ohio Railway Company to condemn any and all property and rights, corporeal or incorporeal, necessary to the exercise of the powers herein granted, approved February 11, 1896;

An Act to authorize The Chesapeake and Ohio Railway Company to acquire, or acquire an interest in, extensions and additions to its system of railroads, within and without this State, and to acquire, hold or guarantee the stock and bonds or either of other corporations, approved February 16, 1901;

3. That on the said 1st day of July, 1878, when The Chesapeake and Ohio Railway Company became and was erected into
11 a corporation, various general statutes and laws, from time to time, passed by the General Assembly of the State of Virginia, entered into and formed a part of its charter, as provided by section 1, of chapter 61, of the Code of Virginia, of 1873 (said section appearing also as section 1185 of the Code of Virginia, of 1887), which said section is in the words and figures following:

"1. Every company which is governed by the Act passed on the seventh day of February, eighteen hundred and seventeen, prescribing certain general regulations for the incorporation of turnpike companies, or by the Act passed on the eleventh day of March, eighteen hundred and thirty-seven, prescribing certain general regulations for the incorporation of railroad companies, and every company which, after the commencement of this Act, shall be incorporated to construct any work of internal improvement, shall be governed by the provisions contained in the fifty-seventh chapter and in this chapter, so far as they can apply to such company without violating its charter."

That among said public statutes so entering into and forming part of its charter are the statutes appearing as sections 18, 58, and 60, of chapter 61, of the Code of Virginia of 1873 (said sections appearing also as sections 1202, 1240 and 1242, of the Code of Virginia of 1887), which said sections 18, 58 and 60, are in the words and figures following:

"18. On a railroad on which different rates are not prescribed by

law, the following rates of toll may be charged for transportation, to-wit: Of a person and his baggage within a hundred and fifty pounds, not exceeding six cents per mile; of produce and other articles, except gypsum, lime, guano and other specific manures, not exceeding eight cents per ton per mile; and gypsum, lime, guano and other specific manures, not exceeding four cents per ton of twenty-two hundred and forty pounds per mile; and for the transportation of any person, or of any produce or other articles, for a distance of less than ten miles, a charge may be made at the foregoing rates as for ten miles. And where articles weigh less than four pounds to the cubic foot, a toll may nevertheless be charged on each cubic foot as for four pounds weight. And when the articles in any one consignment weigh less than one hundred pounds, a toll may be charged on the same as for one hundred pounds weight. If, for the transportation of any person with his baggage, or for any consignment, the whole charge at the rates before mentioned would be less than twenty-five cents, the same may nevertheless be charged as a minimum. For the weighing, storage and delivery of articles at any depot or warehouse of the company, a charge may also be made not exceeding the ordinary warehouse rates charged in the town in which, or nearest to which, the depot or warehouse is situated.

58. The charter of every company which is governed by the Act passed on the eleventh day of March, eighteen hundred and thirty-seven, prescribing certain general regulations for the incorporation of railroad companies, and of every company hereafter incorporated, which shall be governed by this chapter, may be altered or modified by any future legislature as may seem to it proper, except that no law shall be passed for taking from a company its works or property without making to it just compensation, or for changing its tolls without its assent, in any other cases than such as are specially provided for in this chapter.

60. When the net profits of any company hereafter incorporated which may be governed by this chapter shall be such that, but for this section, dividends might be declared out of the said profits exceeding the rate of fifteen percentum per annum on the capital stock invested, laws may be passed for reducing the tolls of the company. But no law shall reduce the tolls so as to prevent dividends of fifteen percentum per annum within thirty years from the time the first dividend of profits of the said company was declared, or so as to prevent dividends of twelve per centum per annum after the said thirty years and before fifty years from the same time, or so as to prevent dividends of ten percentum per annum after the said fifty years."

4. That each and every one of the said Acts were duly accepted and acted upon, and the same entered into and formed a part of its charter; and that each and every one of the various public statutes, from time to time passed by the General Assembly of the State of Virginia, and hereinbefore at length copied and set forth, entered into and formed a part of its charter, and said charter, as set forth, constitutes a lawful and valid contract between it The Chesapeake and Ohio Railway Company and the State of Virginia.

5. That in order to provide for and discharge the consideration of the deed of conveyance, dated July 1, 1878, whereby The Chesapeake and Ohio Railway Company was created, and provide for the contracts, agreements and obligations of the Committee of Purchase and Reorganization, according to the plan of reorganization
13 of the Chesapeake and Ohio Railroad Company, lawfully assumed by The Chesapeake and Ohio Railway Company, pursuant to the statutes of Virginia in such cases made and provided, and hereinbefore referred to, and entering into and forming part of the consideration of the said deed of conveyance, it, the said The Chesapeake and Ohio Railway Company, issued and invested $36,047,436.04 in stock, and $29,391,399.87 in bonded and funded debt, in the acquisition of the property described and conveyed in said deed. A copy of said plan of reorganization of the Chesapeake and Ohio Railroad Company, together with copies of the various mortgages duly executed and recorded pursuant thereto, all bearing date on the 1st day of July, 1878, to-wit: from The Chesapeake and Ohio Railway Company to Joseph Bryan and Henry T. Wickham, Trustees, from the Chesapeake and Ohio Railway Company to Central Trust Company of New York, Trustee, and from The Chesapeake and Ohio Railway Company to Alexander B. Green and I. E. Gates, Trustees, to which said plan and mortgages this complainant now refers, will be filed if desired; that the $36,047,436.04 in stock above referred to, is the stock invested as contemplated in said plan of reorganization and said deed of conveyance dated July 1, 1878; that the $29,391,399.87 in bonded and funded debt above referred to is the bonded and funded debt invested as contemplated in said plan of reorganization, and said deed of conveyance dated July 1, 1878, and secured by the three mortgages last above mentioned; that in order to carry out the purpose for which it, The Chesapeake and Ohio Railway Company, was incorporated, and as contemplated and set forth in the various acts hereinbefore referred to, it, The Chesapeake and Ohio Railway Company, issued from time to time, and had outstanding as of June 30, 1905, a total aggregate of $62,799,400.00 of capital stock invested, and $80,699,354.17 of bonded debt and $8,295,600.00 of Equipment obligations (outstanding as of June 30, 1906, a total aggregate of $62,799,100.00 of capital stock invested and $86,680,354.17 of bonded debt and $9,824,666.67 of Equipment obligations), all done pursuant to the contract existing between it, The Chesapeake and Ohio Railway Company, and the State of Virginia, and under which it has acquired and constructed a great railroad system in the State of Virginia, West Virginia, Kentucky and Ohio, as hereinbefore more particularly described; that in being so erected into a corporation and so acquiring and con-
14 structing its railroad lines, and in so disposing of its stock and bonds, and in executing its mortgages, and in constructing, acquiring and completing its works, and in managing, adjusting and conducting its business and affairs, and in entering into and prosecuting its enterprises permitted by its said charter, it, The Chesapeake and Ohio Railway Company, exercised all proper and business-like discretion, judgment, prudence and economy and

acted under and relied on the *on the* acts and statutes of the General Assembly of Virginia hereinbefore set forth; that especially did it, The Chesapeake and Ohio Railway Company, rely upon sections 1, 18, 58 and 60, of chapter 61, of the Code of Virginia of 1873 (said sections appearing also as sections 1185, 1202, 1240 and 1242, of the Code of Virginia of 1887); that the purchasers of its stock and bonds, issued as above stated, in making their investments therein, likewise relied upon the said charter of The Chesapeake and Ohio Railway Company, and said acts and statutes of the General Assembly of the State of Virginia and the rights of The Chesapeake and Ohio Railway Company thereunder, and the contract thereby created with the State of Virginia.

6. That the net profits of the Chesapeake and Ohio Railway Company have never been such that dividends might have been declared out of said profits exceeding a rate of fifteen percentum per annum on the capital stock invested, nor of twelve percentum per annum, nor of ten percentum per annum, as contemplated in said section 60 of chapter 61 of the Code of Virginia of 1873, which said section also appears as section 1242 of the Code of Virginia of 1887; that no divide-d was paid prior to October, 1899, but that in October, 1899, there was paid a dividend of one percentum amounting to $605,278.00, which dividend has continued to be earned, declared and paid at the rate of one percentum per annum since that time; that it, The Chesapeake and Ohio Railway Company, has not, since said 12th day of June, 1901, or since the passage of the Act of the General Assembly of the State of Virginia entitled "An Act Concerning Corporations," which became a law on the 21st day of May, 1903, either purchased, merged or consolidated with itself any railroad competitive with it between points, both of which are within the State of Virginia, nor has the said The Chesapeake and Ohio Railway Company, since either of said last mentioned dates, accepted or affected any alteration, amendment or extension of its charter under any provision of the Constitution of the State of Virginia, proclaimed to be in effect as of the 10th day of July, 1902, or under or by virtue of any provision of said Act entitled "An Act Concerning Corporations," above referred to; that it, the said The Chesapeake and Ohio Railway Company, has done no act, directly or indirectly, expressing or implying any assent to any act, statute, proposition, provision, rule, requirement, regulation or order whereby its rates of toll can be changed without its assent, and that none of the events have happened constituting a condition precedent to the exercise of any right to change the rates of toll of it, the said The Chesapeake and Ohio Railway Company, by the State Corporation Commission or any other governmental agency of the State of Virginia without its assent, and it expressly avers that it has never at any time, nor does it now, assent to any proceeding, proposition or provision, rule, requirement, regulation or order whereby the Honorable State Corporation Commission of Virginia proposes to change its tolls.

7. That the regular passenger rates, fares and charges as now established and in force for movement wholly within the State

of Virginia, and which does not pass out of the State of Virginia in transit, are substantially the same as the passenger rates, fares and charges established and in force during the year ending June 30, 1905, and are shown in detail in the tariffs published and filed, in accordance with law, by this complainant with the State Corporation Commission of Virginia, and this complainant herewith files copies of said tariffs marked "Exhibit C. & O. No. 1," which it is prayed may be taken, read and considered as a part of this bill; said "Exhibit C. & O. No. 1" containing tariffs as follows:

Tariff D 1, showing fares between stations in the Terminal, Peninsula, Piedmont, Mountain and Washington Districts, between Gordonsville and Orange, Va.

Tariff J. R. 1, for the Rivanna and James River Districts, including branches.

Tariff H. D. 2, for the Huntington Division, including the main line of the Chesapeake and Ohio Railway west of Clifton Forge, Va., and branches, of which the Warm Springs Valley Branch is situated in Virginia.

Tariff Va. 1, which, with the Division Tariffs D. 1, J. R. 1, and H. D. 2, referred to therein, include all the regular one-way and round trip fares in effect between points on the lines of this
16 complainant within the State of Virginia and between Washington and Virginia points, other than mileage, excursion, clerical, party, childrens' and commutation tickets.

8. That the passenger rates and fares charged by the said The Chesapeake and Ohio Railway Company, for the transportation of passengers on its said lines in Virginia are reasonably low and fair to the public and are in all respects just and reasonable.

Second.

1. That on the 27th day of April, 1907, there was promulgated by said State Corporation Commission an order in the words and figures following:

"COMMONWEALTH OF VIRGINIA.

Department of the State Corporation Commission, Richmond.

Before the State Corporation Commission.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION

v.

STEAM RAILROAD COMPANIES.

In the Matter of Prescribing a Maximum Passenger Rate.

CITY OF RICHMOND, *27th Day of April*, 1907.

The State Corporation Commission having carefully considered all the proceedings herein, and all the testimony, exhibits and state-

ments adduced and filed before it in this proceeding, and having put its conclusions in writing, which are made a part of the record herein, the Commission, in order to carry out its said conclusions, now makes the following order and regulations and prescribes the following maximum rates to be observed by all the steam railroad companies operating in the State of Virginia in the transportation of passengers:

1. It is ordered, That on and after the first day of July, 1907, the following steam railroad companies—viz.:

17 Norfolk and Western Railway Company,
Chesapeake and Ohio Railway Company,
Atlantic Coast Line Railroad Company,
Seaboard Air Line Railway Company,
Southern Railway Company,
Richmond, Fredericksburg and Potomac Railroad Company,
Washington-Southern Railway Company,
New York, Philadelphia and Norfolk Railroad Company,
Virginia and Southwestern Railway Company,
Louisville and Nashville Railroad Company—

shall put into effect and observe a maximum rate of two cents per mile in the intrastate transportation of passengers in Virginia, said maximum rate to be observed whether the transportation be entirely over the line of one of the said railroad companies or joint transportation over the lines of two or more companies, and on and after the said date it shall be unlawful for the said railroad companies, or any of them, to charge or collect a greater sum than two cents per mile for the transportation of passengers over the lines controlled and operated by them, respectively, except as otherwise allowed in this order or from time to time by the State Corporation Commission.

2. It is ordered, That a maximum rate of two and one-half cents per mile for the intrastate transportation of passengers be fixed and prescribed, to go into effect on and after the first day of July, 1907, on the following divisions, or branches, of the Southern Railway Company, which are now excepted from the operation of the maximum rate of two cents per mile hereinabove fixed:

Norfolk Division, extending from Pinners Point to Danville, 204 miles, exclusive of so much of the said division as may be in the State of North Carolina;

Franklin Branch, extending from Franklin Junction to Rocky Mount, 37 miles;

Claremont Branch, extending from James River Junction to Claremont, 50 miles.

From and after the said date it shall be unlawful for the Southern Railway Company to charge or collect a greater sum than two and one-half cents per mile for the intrastate transportation of
18 passengers over these divisions, or branches, unless otherwise directed or allowed by the Commission.

3. It is ordered, That on and after the first day of July, 1907, the following steam railroad companies—viz.:

Chesapeake-Western Railway,
Cumberland Valley and Martinsburg Railroad Company,
Danville and Western Railway Company,
Indian Creek and Pound River Railroad Company,
Marion and Rye Valley Railway Company,
Nelson and Albemarle Railway Company,
Valley Railroad Company of Virginia,
Virginia-Carolina Railway Company,
Virginia Southern Railroad Company,
Winchester and Potomac Railroad Company,
Winchester and Strasburg Railroad Company,
Norfolk and Southern Railway Company—

shall put into effect and observe a maximum rate of three cents per mile in the intrastate transportation of passengers in Virginia, and on and after the said date it shall be unlawful for the said railroad companies, or any of them, to charge or collect a greater sum than three cents per mile for the transportation of passengers over the lines controlled and operated by them, respectively, except as otherwise allowed from time to time by the State Corporation Commission.

4. It is ordered, That on and after the first day of July, 1907, the following steam railroad companies—viz.:

Big Sandy and Cumberland Railroad Company,
Black Mountain Railway Company,
Interstate Railroad Company,
Lick Creek and Lake Erie Railroad Company,
Mt. Airy and Eastern Railway Company,
New River, Holston and Western Railroad Company,
Potomac, Fredericksburg and Piedmont Railroad Company,
Surry, Sussex and Southampton Railway Company,
Tidewater and Western Railroad Company,
Virginia Anthracite Coal and Railway Company,
Virginia and Kentucky Railway Company,
Wise Terminal Company—

19 shall put into effect and observe a maximum rate of three and one-half cents per mile in the intrastate transportation of passengers in Virginia, and on and after the said date it shall be unlawful for the said railroad companies, or any of them, to charge or collect a greater sum than three and one-half cents per mile for the transportation of passengers over the lines controlled and operated by them, respectively, except as otherwise allowed from time to time by the State Corporation Commission.

5. It is further ordered, That in applying the foregoing maximum passenger rates prescribed for the several railroads in Virginia, the railroad companies may charge and collect a minimum rate of ten cents per passenger for any single haul.

6. The payment of fares subject to the maximum rate herein prescribed shall entitle the passenger to the same transportation of baggage as now allowed by the carriers under and in connection with the present rates, and no steam railroad company operating in Vir-

ginia shall change or alter the rules governing the rights of passengers with respect to the transportation of baggage in Virginia, without the consent of the Commission first obtained.

7. Steam railroad companies operating in Virginia may charge and collect, in addition to regular ticket rates, the fixed sum of ten cents from all cash fare passengers who had been afforded reasonable opportunity for purchasing ticket before boarding train; provided, that the conductor shall in all such cases deliver to passengers a receipt for the amount collected, redeemable at any ticket office of the company within thirty days from date of issue.

It is ordered, That the Clerk of the Commission do forthwith publish this order in full in one of the newspapers of general circulation published in the city of Richmond, once a week for four successive weeks, as required by law.

A true copy—Teste:

R. T. WILSON, *Clerk.*"

2. That Richard T. Wilson, Clerk of the State Corporation Commission of Virginia did thereupon cause said order to be delivered to the Times-Dispatch Company, to be published once a week for four successive weeks, and that said defendant, the Times-Dispatch Company did on Tuesday the 30th day of April, 1907, begin said publication, and is now proceeding to publish the same once a week for four successive weeks in accordance with said order.

3. That the effect of the application of the proposed rule, regulation, order or requirement, of the Commission fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers, will be to materially and greatly change the rates of toll established by this complainant and thereby cause a loss of revenue to this complainant of not less than the sum of $138,317.77 per annum which amount this complainant is able to figure with reasonable accuracy, but a much greater loss will be caused to this complainant as hereinafter indicated, and that it will not be possible for the said The Chesapeake and Ohio Railway Company in the operations of its lines in Virginia to reimburse itself for the loss which will be sustained by it consequent upon the establishment of the maximum two cents per mile passenger rate as proposed.

Third.

1. That this proceeding is a suit in equity brought by complainant to redress the deprivation occasioned by said order of certain rights and immunities guaranteed to it by the following provisions of the Constitution of the United States, namely:

(*a*) Article 1, section 10, providing that no State shall pass any law impairing the obligation of contracts;

(*b*) Article 1, section 8, paragraph 3, providing that Congress shall have power to regulate commerce among the several States;

(*c*) The Fourteenth Amendment, section 1, providing that no State shall deprive any person of life, liberty or property without due process of law or deny to any person within its jurisdiction the equal protection of the law.

This complainant respectfully claims the benefit and protection of said provisions of the Constitution and of the laws of the United States passed in pursuance thereof.

2. The amount in controversy in this cause, exclusive of interest and costs, exceeds the sum of ten thousand dollars ($10,000).

21 Fourth.

1. That the power, authority and action of the Honorable State Corporation Commission of Virginia in promulgating the order above referred to, are based upon certain public enactments by the people of Virginia, in convention assembled, proclaimed as effective on the 10th day of July, 1902, and in their General Assembly convened as, from the present constitution and statutes enacted pursuant thereto, to which special reference is hereby made as fully as if the same were herein at length set forth, will fully and at length appear; that sections 155 and 156 of said Constitution of Virginia and the various acts of the legislature of Virginia, subsequently enacted pursuant to said Constitution under which the Honorable State Corporation Commission of Virginia is organized, do not and cannot constitute or afford due process of law within the meaning of the Fourteenth Amendment to the Constitution of the United States; that the said constitutional provisions and acts of the General Assembly of Virginia, pursuant thereto, seek to confer upon this Honorable Commission, legislative, judicial and executive powers and functions in respect to the same matter, and in addition to not constituting due process of law, do not afford this respondent the equal protection of the laws within the meaning of said Fourteenth Amendment; and this respondent shows that section 5 of the Bill of Rights of Virginia, which in the present constitution of that State is declared to be the basis and foundation of government, provides, "That the legislative, executive and judicial departments of the State should be separate and distinct;" and that the 39th section of the Constitution provides, "Except as hereinafter provided, the legislative, executive and judiciary departments shall be separate and distinct, so that neither exercise the powers properly belonging to either of the others, nor any person exercise the power of more than one of them at the same time." The single exception alluded to in section 39 of said Constitution embraces matters pertaining to transportation and transmission companies relating to the performance of their public duties and their charges therefor. While, therefore, for the protection of every other interest in Virginia, a judicial tribunal is provided by the Constitution and Laws of the State, which is not clothed with legislative and executive functions with respect to matters in

22 which it is required to exercise judicial functions, this protection is denied to this complainant and all other transportation companies in respect to their public duties.

In respect to transmission and transportation companies this Honorable Commission has been established by the Constitution of Virginia, which seeks to impose, and if valid, does impose upon the Commission the duty, or invest it with the power of instituting proceedings before itself in respect to the public duties of transmission

and transportation companies without any party complainant except the Commission itself; of legislating thereon and declaring what shall be the rule of action in respect thereto; of exercising judicial functions as a court in respect to the law or rule of action thus established; and of exercising administrative or executive functions in regard to the same subject matter. The same tribunal in respect to the same subject matter and the same party defendant exercises the legislative function of declaring what the future law shall be; the judicial function in declaring that law constitutional and valid and enforcing compliance with its orders, and adjudging against the defendant fines or penalties prescribed or authorized by the Constitution and the statutes; and the administrative or executive function of enforcing penalties and collecting fines by it adjudged to be imposed.

This complainant, therefore, respectfully submits that by the law of its creation, this Honorable Commission is made incapable of that judicial consideration and action in respect to this complainant and all other transportation and transmission companies in a like situation which due process of law requires; and respectfully submits further that in subjecting such transportation and transmission companies to the tribunal thus created and denying to them the protection of judicial tribunals which are not clothed with legislative and executive functions with respect to the same matter in which they are called upon to exercise their judicial functions, such as are provided for every other person in the State of Virginia by its Constitution and laws, the said Constitution and the statutes above referred to not only do not constitute, in respect to transmission and transportation companies, due process of law, but deny to them the equal protection of the law, contrary to the Fourteenth Amendment to the Constitution of the United States, the benefit and protection of which The Chesapeake and Ohio Railway Company now respectfully invokes in the premises.

23 2. Furthermore, it will be seen by an inspection of said section 156 of the Constitution and the acts of the legislature of Virginia, above referred to, that, if this complainant fails to obey any valid order or requirement of the Commission within such reasonable time, not less than ten days, as shall be fixed in the order, it may be fined by the Commission on notice, such sum not exceeding five hundred dollars as the Commission may deem proper, or such sum in excess of five hundred dollars as may be prescribed or authorized by law, and each day's continuance of such failure after due notice of such order is made a separate offense, so that this complainant is deterred from the effort to have legally and judicially determined what order is valid by the stress of the risk of excessive, extreme and cumulative fines and penalties, and is under the duress of submitting to an order which the court may hold invalid, rather than take the chances of the excessive fines and penalties imposed for the failure to comply with the said order, and thus this complainant is deprived of the equal protection of the laws, in violation of section 1, article 14 of the amendment to the Constitution of the United States, the imposition of said excessive fines and penalties

being also prohibited by the 8th amendment to the Constitution of the United States.

Fifth.

This complainant further respectfully shows that the said order of the Honorable State Corporation Commission of Virginia, above referred to, should not be put into effect as to it because it avers that to reduce its rates, fares or charges for the transportation of passengers as proposed would be confiscatory; would reduce its earnings below what reasonable rates, fares and charges would produce; deprive this complainant of its property without just compensation and without due process of law, and deny to it the equal protection of the laws contrary to the Fourteenth Amendment to the Constitution of the United States as will appear from the considerations next hereinafter set forth.

The existing passenger rates, fares and charges upon this complainant's lines in the State of Virginia and applicable to intrastate business in said State are not higher than is just and reasonable, whether considered in respect to the value of the property used in the public service or in respect to the value of the
24 service rendered to the passengers, and are correctly set forth in the passenger tariffs hereinbefore referred to.

This complainant further shows that the effect of said reduction in its passenger rates, fares and charges so proposed to be put into effect by said order upon the business of this complainant, the movement of which is wholly within the State of Virginia and which does not pass out of said State en route, for the year ending June 30, 1905, is as follows:

That the gross earnings of The Chesapeake and Ohio Railway Company in Virginia from all sources, both inter- and intrastate for the year ending June 30, 1905, were		$8,411,329.06
The operating expenses in Virginia for said year were		5,382,066.29
Leaving net earnings from all sources in Virginia for said year the sum of		3,029,262.77
That its gross earning from intra-state business from all sources in the State of Virginia for said year were—		
From freight	$857,819.07	
From passenger fares, rates and charges	642,143.81	
From parlor cars and excess baggage	24,970.29	
From express	46,935.40	
From U. S. Mail	68,818.44	
From all other sources	43,226.67	
		$1,683,913.68

Whereas, under the application of the proposed order of the Commission, fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers, the result on the business of the same year would have been—

25 From freight..... $857,819.07
From passenger fares, rates and charges 503,826.04
From parlor cars and excess baggage... 24,970.29
From express 46,935.40
From U. S. Mail..... 68,818.44
From all other sources..... 43,226.67
$1,545,595.91

The maximum net earnings from said intrastate traffic in Virginia (arrived at by deducting from the gross intrastate earnings in Virginia the operating expenses incident to the carrying thereof, which is not less than 78.99 per cent. of such gross earnings for the year ending June 30, 1905), were. 353,790.26

Whereas, under the application of the order of the Commission fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers, said maximum net earnings would have been..... $215,472.49

But intrastate earnings in Virginia should contribute to the payment of taxes chargeable to Virginia not less than the proportion which said intrastate earnings in Virginia bear to the total gross earnings in Virginia, viz.; 20.02 per cent.

The total amount of taxes paid in Virginia for said year were as follows:

State $139,814.22
County 88,662.05
Municipal 76,656.99
$305,133.26

20.02 per cent. of which is..... $61,087.68

In like manner intrastate earnings in Virginia should contribute to the payment of reasonable betterments in the same proportion.

26 The amount expended in Virginia during said year for such betterments and not charged to capital account was..... 708,154.82

of which 20.02 per cent. is..... $141,772.59

thus leaving as maximum net intrastate earnings in Virginia, after deducting taxes and reasonable betterments not capitalized, properly chargeable to said intrastate earnings the sum of $150,929.99 as follows:

Maximum net earnings as above from actual business in Virginia for year ending June 30, 1905... $353,790.26
Deduct taxes, 20.02 per cent. of $305,133.26 ..... $61,087.68
Deduct betterments, 20.02 per cent. of $708,154.82 ..... 141,772.59
202,860.27

$150,929.99

Whereas under the application of the proposed order of the Commission, fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers, the maximum net earnings from said intrastate traffic would have been as aforesaid		$215,472.49
from which should be deducted such proportion of the total reduced taxes chargeable in Virginia as is applicable to intrastate traffic, in the ratio of the reduced intrastate gross earnings in Virginia to reduced total gross earnings in Virginia, being 18.68 per cent., to-wit:	$56,884.87	
and deducting the same per centage, to-wit: 18.68 per cent. of reasonable betterments not capitalized, chargeable to Virginia during the same year, to-wit:	$132,283.32	
		$189,168.19
leaves maximum net earnings in Virginia		$26,304.30

27 for the payment of interest charges and returns on the capital invested.

This complainant respectfully shows that there is in reference to its property as in reference to all other classes of property in the State of Virginia, whether owned by individuals or corporations a difference between the commercial and the tax assessment value, the said commercial value being in respect to all classes of proper greater than the value assessed for purposes of taxation; and this complainant does not admit that the tax value assessment is the value which ought to be considered for the purpose of estimating its right to make reasonable earnings on the property used by it, but this complainant is advised that the State of Virginia having made the assessment for the purpose of taxation upon this complainant's property in said State cannot deny that its property is worth at least the amount of said assessment; and if the earnings which it can make under the proposed classification, rates and charges are estimated only in reference to the said assessed value of its property made by the State of Virginia for the purpose of taxation, this complainant shows that the same will not permit it to earn a reasonable profit even upon that valuation, and will deprive it of the legitimate use of its property.

The total property value of the physical properties of this complainant, assessed by the Honorable State Corporation Commission, and upon which taxes were paid for the year ending June 30, 1905, was	$15,135,857.00
The franchise tax of $84,665.22, assessed by the Honorable State Corporation Commission, and paid by this complainant in the year ending June	

30, 1905, capitalized at the same rate of taxation as that imposed upon its physical properties, to-wit: 35 cents on the $100.00 shows a value of....		$24,190,000.00
Thus producing a total value of.....		$39,325,857.00
Taking $20.02 per cent. (the ratio which the gross intrastate traffic earnings in Virginia bear to the total gross traffic earnings in Virginia), thereof, the value of the property used in Virginia for intrastate purposes on the basis of Virginia assessment for the purpose of taxation is shown to be..		$7,873,036.57

28 Upon even this valuation the net amount earned by this complainant under its existing passenger rates, fares and charges from its intrastate business in the State of Virginia after deducting the proportion of taxes and betterments properly chargeable against such intrastate earnings, viz.: 20.02 per cent. amounts to less than two per cent., from which said intrastate business in Virginia should pay its proportion of the interest on the bonds properly chargeable to its lines in Virginia, and dividends on its stock invested.

This complainant further shows that the total bonded debt applicable to its lines in the State of Virginia is $45,631,920.16,

on which the annual interest charge is.....	$1,969,162.41	
and that the annual trackage and rentals paid for lines in Virginia by this complainant amounts to.	15,863.80	
Total interest, trackage and rentals applicable to Virginia.....		$1,985,026.21
The maximum net earnings from intrastate traffic in Virginia should contribute its pro-rata proportion to the payment of such interest and rental charges in the ratio of intrastate net earnings from all sources in Virginia to total net earnings in Virginia, inter and intrastate, to-wit: 11.68 per cent., viz.: the sum of.....		231,851.06
But as hereinbefore shown the maximum net earnings from intrastate traffic in the State of Virginia under the existing passenger rates and charges, after deducting its proportion of taxes and betterments for said year, amounted only to the sum of		$150,929.99
Leaving a deficit under the actual existing passenger rates, fares and charges of.....		80,921.07

The deficit under the application of the proposed order of the Commission fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers, would have been not less than $121,580.15, shown as follows:

29 As before shown, the total interest, trackage and rentals applicable to Virginia are.... $1,985,026.21

The maximum net earnings from intrastate traffic in Virginia should contribute its pro-rata proportion to the payment of such interest and rental charges in the ratio of intrastate net earnings from all sources in Virginia under the proposed order of the Commission fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers to the total net earnings in Virginia under the proposed order of the Commission fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers, to-wit: 7.45 per cent., namely, the sum of..... $147,884.45

But, as hereinbefore shown, the maximum net earnings from intrastate traffic in the State of Virginia under the proposed order of the Commission fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers after deducting its proportion of taxes and betterments for said year, amounted only to the sum of..... $26,304.30

thus leaving a deficit as aforesaid of..... $121,580.15

and in the foregoing statements and calculations no account has been taken of, nor allowance made for, the net loss to this company growing out of or in any way connected with its investments in, or operations of, companies controlled by it or in which it may be interested.

This complainant further shows that the figures given in this bill, in respect to the result on its revenues for the year ended June 30, 1905, are in their net result fairly representative of past conditions, but are not fairly representative of future conditions for the reason that the operating expenses of this complainant have, since June 30, 1905, increased relatively for more than its gross earnings, and that the net result will be *given* more unfavorable, and yield a still smaller relative return to this complainant than is here shown for the year ended June 30, 1905.

The figures given in this bill are, as will be noted, for the year ended June 30, 1905. The reason similar figures are not
30 given for the year ended June 30, 1906, is that they have not, as yet, been accurately compiled, but complainant asks leave in the progress of this cause to give similar figures for the year ended June 30, 1906, or 1907, which plaintiff alleges will show similar confiscatory consequences of the said proposed passenger fares as are here shown for the year ended June 30, 1905.

The complainant further shows that there will be no compensatory increase in the business of this complainant resulting from the proposed reduced rates, and that there will be no appreciable or

substantial increase whatever in such business due to such reduced rates.

The lines of railway of this complainant have at all times been operated as economically as practicable, under the existing conditions, and its operating expenses have at all times, under the conditions confronting it been as reasonably low in amount as they could be made by economical and judicious management, and it has not been possible under the conditions existing for the complainant to operate its road for less than it has been operated. In all respects it has confined its operating expenses, its taxes, its interest, and every other expenditure within the lowest and narrowest limit reasonably practicable under existing conditions.

This complainant, therefore, respectfully shows that the result of the application of the proposed order of the Commission fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers would be confiscatory; reduce its earnings below what reasonable passenger rates, fares and charges would produce; deprive this complainant of its property without just compensation, and without due process of law, and deny to it the equal protection of the laws, all contrary to the Fourteenth Amendment of the constitution of the United States, the benefit and protection of which this complainant respectfully claims.

Sixth.

This complainant further states that on said 27th day of April, 1907, the Honorable State Corporation Commission of Virginia promulgated another and separate order, prescribing a uniform freight classification and rates thereunder in the words and figures following:

31 "COMMONWEALTH OF VIRGINIA, at the Relation of THE STATE CORPORATION COMMISSION,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY ET ALS.

In the Matter of Prescribing a Uniform Freight Classification and Rates Thereunder.

CITY OF RICHMOND, *the 27th Day of April*, 1907.

The State Corporation Commission having carefully considered all of the proceedings, testimony, exhibits and statements adduced and filed before it in this proceeding, and having put its conclusions in writing which are made a part of the record herein, the commission now, in order to carry out its said conclusions, makes the following order and regulation, and prescribes the following requirements to be observed by the following railroad companies, defendants in this proceeding, viz:

Atlantic Coast Line Railroad Company,
The Chesapeake and Ohio Railway Company,
Norfolk and Western Railway Company,
Seaboard Air Line Railway,

Norfolk and Southern Railroad Company,
Baltimore and Ohio Railroad Company,
Southern Railway Company,
Valley Railroad Company of Richmond,
Louisville and Nashville Railroad Company,
New York, Philadelphia and Norfolk Railroad Company,
Virginia and Southwestern Railway Company,
Winchester and Potomac Railroad Company,
Winchester and Strasburg Railroad Company.

1. It is ordered, That all of the said defendant railroad companies do adopt and put into effect as the only freight classification under which their Virginia intrastate freight traffic, is to be moved, the classification filed in this proceeding with the original notice herein, issued on the 3rd day of August, 1905, as changed, corrected and added to by the printed paper containing said changes, corrections and additions, filed with the order issued in this proceeding on the 13th day of March, 1906, said papers embracing a complete freight classification with general rules and regulations as ap-
32 pearing therein; the said classification to be known and hereafter denominated as Virginia Classification No. 1. The said Virginia Classification No. 1 is to go into effect on the first day of July, 1907, and from and after that date, all class rates, except as hereinafter ordered, shall be governed by said classification, and no other classification shall be in effect or shall be used on the lines of any of the said defendant railroad companies in their intrastate traffic, except in so far as may be hereafter allowed by the commission.

2. It is further ordered, That each one of the defendant railroad companies shall, as early as practicable, and from time to time, before the 1st day of June, 1907, prepare and submit to the State Corporation Commission, for its inspection and confirmation, or correction, tariffs or schedules of rates showing class rates for its road, governed by said Virginia classification, so as to make said classification applicable to all its freight rates without the use of or application of any other classification; provided, however, that in making and preparing said tariffs or schedules of rates no one of the defendant railroads shall increase any of its present rates or amount of money charged on any article for any haul, nor shall any road maintain rates which are materially above the general level of standard rates in Virginia, as defined in the opinion of the commission, without the express special authority of the commission in each case. Any one of the defendant railroads which shall not, by the 1st day of July, 1907, have so readjusted its class rates, and have issued to take effect from and after that date, tariffs and schedules of rates for its road, subject to said Virginia Classification No. 1, as hereinbefore prescribed and as just hereinabove required in this order, shall, from and after the said 1st day of July, 1907, apply, follow and observe the charges resulting from the application of the Virginia Classification No. 1, as amended and altered in this proceeding, to the several freight tariffs, subject thereto, to-wit: Nos. 1, 2, 3, 4 and 5, and which, together with the said classification, have been the basis of this proceeding; and such road so failing shall continue to make its charges as just prescribed

until it shall have filed before the commission and put in force, as revised by it, the tariffs, or schedules of rates, as ordered. The originals of the said classifications, of the alterations therein and additions thereto, and of the said freight tariffs and circulars bearing the signatures of the three Commissioners are filed with the record herein.

33 3. The State Corporation Commission will, at any time, from and after the 10th day of May, 1907, hear and promptly dispose of applications which may be made by any of the defendant railroad companies for special exception sheets or commodity tariffs applicable to articles producing substantial revenues, the rates on which are alleged to have been unreasonably curtailed or reduced as the result of the action and order of the Commission herein, and upon such application and the facts and evidence and statements submitted thereon, the Commission will prescribe such exception sheets or commodity tariffs as may be fair and reasonable, or may be necessary or proper to correct or prevent any unjust or unreasonable curtailment or reduction of the freight revenues of the railroad company so applying for such exception sheet or commodity tariff.

4. It is further ordered, That each one of the defendant railroad companies shall, as early as practicable, and from time to time, before the 1st day of June, 1907, prepare and submit to the State Corporation Commission, for its inspection and confirmation, or correction, all of its commodity tariffs, and special rates, now in effect, as to intrastate traffic, and the State Corporation Commission will, at any time, from and after the 10th day of May, 1907, hear and promptly dispose of applications which may be made by any of the defendant railroad companies for confirmation, approval and adoption of the said commodity tariffs and special rates.

5. The Commission will take such further action, enter such further orders, and make such further requirements as may become proper, or necessary to carry out and enforce the directions and conclusions of the Commission in this proceeding, as set out in its opinion and this order."

the effect of which will be to cause a loss of revenue to this complainant on its intrastate of Virginia freight business alone of not less than the sum of $48,809.91 per annum, thereby increasing to a large amount the deficits shown in the next preceding article of this complaint; and in this connection no account whatsoever has been taken of or allowance made for the net loss to this complainant growing out of or in any way connected with its investments in, or operations of, companies controlled by it or in which it may be interested."

This complainant, therefore, respectfully shows that the result of the application of the proposed order putting into effect the
34 freight classification, rates and charges, and the application of the proposed order of the Commission fixing and prescribing a maximum rate of charge of two cents per mile for the transportation of passengers would be confiscatory; reduce its earnings below what a reasonable freight classification, rates and charges

and reasonable passenger rates, fares and charges would produce: deprive this complainant of its property without just compensation, and without due process of law, and deny to it the equal protection of the laws, all contrary to the Fourteenth Amendment to the Constitution of the United States, the benefit and protection of which this complai-ant respectfully invokes.

Seventh.

This complainant further shows that its present passenger rates, fares and charges are not higher than a reasonable compensation for the service rendered by it to the passengers and are in no sense excessive or extortionate and in no way violate any law. This complainant is advised that it has, as an incident of its property and as a property right, the right to charge for each service which it renders a reasonable compensation and this complainant is protected by the Fourteenth Amendment to the Constitution of the United States in making, receiving and collecting such charge.

The effect of the proposed order of the Commission fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers, will be to materially reduce this complainant's charges and to reduce them greatly below what would be a reasonable compensation for the service rendered to the passengers.

This complainant is advised that to prevent it from charging a reasonable compensation for the service rendered to the passengers would be to deprive it of its property without just compensation, and without due process of law, and would deny to it the equal protection of the laws; and this complainant again claims in this regard the benefit and protection of the Fourteenth Amendment to the Constitution of the United States, and shows that if the proposed order of the Commission fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers is put into effect by the Honorable State
35 Corporation Commission the result would be as aforesaid, to deprive it of its property contrary to the Fourteenth Amendment to the Constitution of the United States.

Eighth.

This complainant is further advised that it has, as an incident of its property, and as a property right, the right to increase its charges whenever, under the circumstances then existing, its charges are less than a reasonable compensation for the service which it renders, and that what may be a reasonable charge to-day for a service may become an unreasonably low charge to-morrow, or at any time hereafter, if conditions in respect to the expense of the service, or other conditions, are so changed as to make it so. The complainant is therefore advised that any action by a State which attempts to fix a maximum charge beyond which the complainant cannot go, no matter how unreasonably low such maximum may become under changed conditions, would be to deprive the complainant of its property right to increase its rates up to what would,

under such changed condition be a reasonable compensation for the service rendered, and would therefore, violate the Fourteenth Amendment to the Constitution of the United States. This complainant avers that the said order of the Commission undertakes to fix a maximum beyond which this complainant cannot go, no matter what may be the circumstances, and that, therefore, said order is unconstitutional and void, as being in violation of the Fourteenth Amendment to the Constitution of the United States. This complainant further shows that many of its existing rates are lower than is just compensation for the service rendered, and have heretofore yielded, and will continue to yield to the complainant, much less than a reasonable return upon the value of its property employed in such service. Since they were fixed, the operating expenses of the complainant have, without its fault, been largely increased, the cost of equipment, of materials and supplies, and of labor, necessary for its operations, having all largely increased, so that the net return to this complainant has become much less than it has heretofore been, and it is not now, and never has been, as much as this complainant is entitled to receive. All of said maximum rates fixed by the proposed order of the State Corporation Commission are lower than a just compensation for the
36 service rendered, and are lower than would afford this complainant a reasonable and just return upon the value of its property used in performing the services in return for such rates, and that the effect of said order, because thereof, and also because said order undertakes to impose an immovable maximum, is to deprive this complainant of its property without due process of law, and of the equal protection of the laws, and to take its property without just compensation, contrary to the said Fourteenth Amendment to the Constitution of the United States, the benefit and protection of which is again, in this regard, expressly set up and claimed.

Ninth.

This complainant further shows that its existing rates are properly adjusted in their relation between its interstate rates and its State rates in Virginia and other States, and that all its charges are just and reasonable in themselves, and do not and will not give to this complainant more than a just and reasonable return upon the value of its property used in the transportation service which it renders to the public; and that any reduction in its revenues will seriously embarrass and obstruct it in providing, and will deprive it of its power to properly provide, the facilities which the public commerce dependent upon it for transportation absolutely requires for the movement of traffic, both intra- and interstate. This complainant is advised that no State has a right to require that its own traffic between points within the State shall be given a preferential service, or shall be carried at preferential and lower rates than other traffic. No State has a right to require such discrimination or partiality in favor of its own traffic. This complainant shows that the effect of the said rates proposed to be put into effect, pursuant to the order of the State Corporation Commission hereinbefore referred to, will be

to destroy the proper adjustment of its intrastate rates in Virginia to its interstate rates generally, and to require that a preference shall be given by this complainant, and an undue discrimination exercised by it, in favor of the intrastate passenger traffic in Virginia over the interstate traffic carried by this complainant, and over the intrastate traffic of this complainant in other States, and that to require such preferential and such undue discrimination in regard to
37 the intrastate passenger traffic of the State of Virginia would be to so regulate and burden interstate commerce as to violate the commerce clause of the Constitution of the United States, the benefit and protection of which this complainant respectfully sets up and claims.

Tenth.

This complainant further shows that there is no just reason for making a rule for some of the railroads different from that made for the complainant in respect to its passenger charges, and that there is no reasonable basis for such difference. Each of the carriers in said State of Virginia is, under the Constitution of the United States, entitled to charge a reasonable compensation for the service rendered, and the difference in rates ordered by the said Commission creates a merely arbitrary classification based upon no proper or sufficient reason. This complainant is, therefore, advised that the effect of said order in making such difference in classification and in permitting one carrier to charge for the same service in Virginia a greater sum than is permitted to another carrier in Virginia is to deprive this complainant of the equal protection of the laws contrary to the Fourteenth Amendment of the Constitution of the United States, which this complainant, in this regard, here again respectfully sets up and claims.

Eleventh.

This complainant further respectfully shows that the regular interstate local passenger rates, fares and charges as now established and in force on the lines of this complainant between the States of Virginia, West Virginia, Kentucky and Ohio, are substantially the same as the passenger rates, fares and charges in force during the year ending June 30, 1905, and are shown in detail in the tariffs published and filed in accordance with law, with the Interstate Commerce Commission, and this complainant herewith files copies of said tariffs marked "Exhibit C. & O. No. 2" which it is prayed may be taken, read and considered as part of this bill; the said "Exhibit C. & O. No. 2" containing the following tariffs: Tariff I. D. 1, being Interstate Commerce Commission Tariff A. 917 with Supplement No. 9 (including Supplements Nos. 1 to 8, inclusive) and
38 Supplements Nos. 10, 11 and 12 thereto; and also Tariff of Unlimited Round Trip Fares, Interstate Commerce Commission No. 864-1. (Limited round trip fares between Washington and Charlottesville and Charlottesville and intermediate stations affected being shown on Page 10 of Tariff Va. 1 hereinbefore filed as part of "Exhibit C. & O. No. 1" and also filed as Interstate Commerce Commission Tariff A. 1129.)

In addition to said interstate local passenger tariffs there are also filed with the Interstate Commerce Commission interline interstate passenger tariffs for through rates or fares between this complainant and other connecting railroad companies for use in through interstate movement, some of which tariffs apply to movements from Virginia points to points beyond and others of which tariffs apply to movements from points beyond to points within and through the State of Virginia. As illustrative of which tariffs applying to movements from Virginia to points beyond this complainant now files as part of this bill marked "Exhibit C. & O. No. 3" tariff entitled "Virginia Passenger Tariff No. 71," being Interstate Commerce Commission Tariff No. 31 with Supplements Nos. 1 and 2 thereto and as illustrative of the tariffs applying to movements from points beyond to points within and through the State of Virginia this complainant now files as part of this bill, marked "Exhibit C. & O. No. 4" tariff entitled "Tariff No. 49, Fares from New York" and being Interstate Commerce Commission Tariff No. 87. And this complainant respectfully shows that the application of said order of the Commission fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers on the lines of The Chesapeake and Ohio Railway Company in Virginia would necessarily result in the disturbance and regulation of interstate rates now established and in effect and would render absolutely null and void its interstate passenger tariffs on file with the Interstate Commerce Commission and controlled and regulated by and under the laws of the United States and would enable interstate passengers to at will obtain interstate transportation from this complainant at less or different compensation from the lawful rates, fares and charges filed and published in accordance with the Act of Congress entitled "An Act to Regulate Commerce," as amended June 29th, 1906.

And this Complainant further shows that under the Constitution of the United States, paragraph 3, section 8, article 1, Congress
39 alone has power to regulate commerce between the States, the benefit and protection of which this complainant now respectfully invokes in the premises.

This complainant further shows that an additional and further loss than it has heretofore shown would be caused to it if the proposed order of the Commission fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers was put into effect over the lines of this complainant in Virginia and between points, both of which are within the State of Virginia, because interstate passengers would use the intrastate two-cent rate for the distances travelled in the State of Virginia and would use this complainant's regular intrastate rates as promulgated and filed with the Interstate Commerce Commission as aforesaid, for the balance of the interstate trip on this complainant's road, thus causing to this complainant a very great loss in its interstate business. To illustrate: the regular interstate rate of this complainant as published and filed with the Interstate Commerce Commission under the provisions of the Interstate Commerce Act amended, as aforesaid, from Richmond to Hinton, W. Va., is $8.05. If the pro-

posed maximum rate or charge of two cents per mile for the transportation of passengers between points within the State of Virginia should be made effective, this interstate passenger would purchase a ticket or mileage transportation entitling him to be carried from Richmond to Alleghany Station, Virginia, a distance of 221 miles at the rate of two cents per mile, for the sum of $4.42. Such interstate passenger would upon arriving at Alleghany, Virginia, either purchase a ticket, which under the rates published and filed, as aforesaid, with the Interstate Commerce Commission, from Alleghany, Virginia, to Hinton, West Virginia, would be $1.55, or he would pay the cash fare to the conductor amounting to the sum of $1.55, and thus his interstate trip from Richmond, Virginia, to Hinton, West Virgina, would cost him $5.97 instead of the sum of $8.05 which latter is the lawful rate, and would cause a loss to this complainant of $2.08 on such movement and this complainant would be powerless to prevent this loss of revenue to it and also powerless to prevent the infraction of the United States law in the premises by transporting said interstate passenger at a less or different compensation between the points named in such passenger tariffs published and filed as aforesaid with the Interstate Commerce Commission than the rates, fares and charges specified in said tariffs filed at the time of said transportation; unless this complainant should reduce its inter-state rates to two cents per mile. This complainant, therefore, respectfully submits that any State law or any rule, regulation, order or requirement of any State Commission which thus forces an interstate carrier to regulate its interstate rates by the intrastate rates prescribed by such law or by such State Commission clearly and directly regulates interstate commerce.

Twelfth.

This complainant further respectfully shows that the various acts and statutes, hereinabove exhibited and recited, entered into and formed a part of the charter of the said The Chesapeake and Ohio Railway Company, which charter constitutes a contract between said State of Virginia and said The Chesapeake and Ohio Railway Company, upon which charter and said acts and statutes, as aforesaid, it, the said The Chesapeake and Ohio Railway Company, relied in full faith, as did also the purchasers of its stock and bonds as hereinbefore set forth; that said contract provided among other things that the General Assembly of Virginia reserved the right to alter, modify and repeal the charter of any railroad company governed by said laws hereinbefore set forth, but it expressly excepted from such right of alteration, modification or repeal the power to change the tolls of this complainant without its assent in the words and figures as follows:

"Except that no law shall be passed for taking from a company its works or property without making to it just compensation, or for changing its tolls without its assent in any other cases than such as are specially provided for in this chapter."

And thereby secured to this complainant as a contractual right with the State of Virginia the right to charge, receive and collect

the tolls as fixed and established and permitted in the public acts hereinbefore set forth. This complainant denies that any of the events have happened which satisfy the condition precedent established by the said law to the exercise of any right on the part of the State of Virginia to change the tolls of this complainant without its assent; and likewise denies that any exceptional case has arisen, or exists, as to this complainant as contemplated in said law; the net proceeds of this complainant have never amounted to a sum
41 equal to its capital stock with six per centum interest thereon; its net profits have never been such that dividends might be declared out of the same exceeding, or as much as the rate of 15 per centum per annum on the capital stock invested, or as much as 12 per centum per annum, or even the 10 per centum per annum specified in said statute.

This complainant has not since the passage of the Act of the General Assembly of the State of Virginia entitled "An Act concerning corporations" which became a law on the 21st day of May, 1903, either purchased, merged or consolidated with itself any railroad competetive with it between points both of which are within the State of Virginia, nor has it since the passage of said last mentioned act accepted or effected any amendment to, or of, its charter, and it expressly avers that it has never at any time, nor does it now assent to any change in its tolls, and it has not in any way waived or lost the right guaranteed to it by said contract with the State of Virginia in respect to its tolls. On the contrary this complainant insists that said contract is within the protection of paragraph 1, section 10, article 1 of the Constitution of the United States, which provides among other things that no State shall pass a law impairing the obligation of contracts.

That on the 19th day of February, 1904, the General Assembly of Virginia passed an Act repealing, among others, sections 1185, 1202 (as amended by the Act of the General Assembly of Virginia, approved March 3, 1898), 1240, 1241 and 1242 of said Code of Virginia of 1887, as will appear from the Acts of Assembly, of the State of Virginia, session 1904, chapter 22, page 55, to which special reference is hereby made; but it was especially provided in said Repealing Act that such a repeal should not affect or impair any act done, or right established, accruing, accrued, or acquired prior to the passage of said act under or by virtue of any provision of the Code or amendment thereof or Act of the General Assembly repealed by said section; it being the intent to preserve every right accrued or acquired prior to the passage of said Repealing Act, and it was expressly provided in said Repealing Act, section 2, that nothing in said Act contained should be construed to impair the charter of any corporation existing at the passage of said Act, or any right which any existing corporation may have or had at the date of the passage and approval of said Act by virtue of any provision of the Code or amendment thereof, or Act of the General Assembly repealed by
42 said Repealing Act; that all the rights, therefore, of it, the said The Chesapeake and Ohio Railway Company, in the premises were fully preserved to it by the express terms of said Repealing Act;

That said paragraph 1 of section X. of Article 1 of the Constitution of the United States limits the power of the State not only in its Legislature, but also in convention assembled, and that no constitution, ordinance, or other action of the Constitutional Convention, which assembly on the 12th day of June, 1901, and proclaimed the present Constitution of the State to be effective as of July 10, 1902, can impair the obligation of the contract existing between the State of Virginia and The Chesapeake and Ohio Railway Company, in derogation of said provisions of the Constitution of the United States; that *a fortiori* neither the Honorable State Corporation Commission of the State of Virginia, nor any other governmental agency of said State, can impair the obligation of said contract, and said The Chesapeake and Ohio Railway Company respectfully asks the benefit of the protection extended by said clause of the Constitution of the United States.

Thirteenth.

It is provided by the Constitution of Virginia that any corporation failing or refusing to obey any valid order or requirement of the Commission within such reasonable time, not less than ten days, as shall be fixed in the order, may be fined by the Commission (proceeding by due process of law) such sum not exceeding five hundred dollars as the Commission may deem proper, or such sum, in excess of five hundred dollars, as may be prescribed or authorized by law; and each day's continuance of such failure or refusal, after due service upon such corporation of the order or requirement of the Commission, shall be a separate offense. And it is further provided that the right of no person to institute and prosecute in the ordinary courts of justice any action, suit or motion against any transportation or transmission company for any claim or cause of action against such company shall be extinguished or impaired by reason of any fine or other penalty which the Commission may impose, or be authorized to impose, upon such company because of its breach of any public duty, or because of its failure to comply with any order or requirement of the Commission; but in no such
43 proceeding by any person against such corporation, nor in any collateral proceeding shall the reasonableness, justness or validity of any rate, charge, classification of traffic, rule, regulation, or requirement, theretofore prescribed by the Commission, within the scope of its authority, and then in force, be questioned.

Your complainant is informed, believes and so charges that in the operation of its lines of railway in Virginia it receives and carries every day between points within the State of Virginia many hundreds of passengers; that in the transportation of said passengers, between points in Virginia, your complainant is by said order of the Honorable State Corporation Commission of Virginia restricted to a maximum of two cents per passenger per mile, and your complainant must either accept this rate without protest or act at its peril if it dares to charge a higher rate. That in the hundreds of actions that will be brought either by or on behalf of the State of Virginia to recover penalties and fines for violating said order, or by

or on behalf of individuals to recover damages for failure of your complainant to comply therewith, the adversary of your complainant will have nothing to do but to produce the said order and prove its publication, and without any further evidence in this regard the burden is placed upon your complainant to prove affirmatively in each of said suits or prosecutions that the rates fixed by the Honorable State Corporation Commission of Virginia are illegal, unjust and unreasonable and amount practically to a confiscation of your complainant's property in Virginia, even if under the provisions of the Constitution and laws passed in pursuance thereof it could make any such defense.

Your complainant is advised that the question as to what is a reasonable and nonconfiscatory rate to be charged is an exceedingly difficult and complicated question; a question wholly unfit for the consideration of a jury or a Justice of the Peace; a question which requires for its determination an inquiry into numerous and technical facts, to prove the existence of which requires frequently many witnesses, and among them the officers, agents and employés of your complainant, who are charged with duties of great importance to the public, the proper discharge of which duties require the almost constant attendance of said officers, agents and employés in the offices where their books and papers are kept and in the offices where they should be to carry out their duties and responsibilities to the public.

44 Your complainant is informed and believes and so charges that if your complainant refuses or fails to put into effect the reduction in its passenger rates on its lines in Virginia as made in the said order of the State Corporation Commission of Virginia, above referred to, said Commission will cause to be instituted a multitude of actions against your complainant, to recover the excessive fines and penalties hereinbefore more fully set forth for alleged violation of said order; and that a great multitude of complaints, actions, suits and proceedings will be brought against your complainant. Your complainant will also be subjected to great expense in employing counsel to defend such complaints, actions, suits and proceedings. The pendency of such complaints, actions, suits and proceedings, aggregating such enormous amounts, would have a tendency to depreciate the value of your complainant's property, stock and bonds, and will inflict great injury and damage upon the stockholders and bondholders of your complainant.

Your complainant is informed, believes and so charges that if the reduction in its passenger rates as ordered by the State Corporation Commission of Virginia should be put into effect by your complainant upon its lines in Virginia, even though it were done under protest, it would require a multiplicity of suits for your complainant to recover from each passenger the difference between the reduced rate and its legal established rate of three cents per mile; that it would be exceedingly burdensome, expensive and, indeed, impossible for your complainant to produce in each of said complaints, actions, suits and proceedings the necessary witnesses, papers, books and other testimony to show the illegal, unreasonable and unjust rate fixed by the

Honorable State Corporation Commission of Virginia in its order as aforesaid. Your complainant would also be subjected to great expense in the loss of time of its officers, agents and employés in giving the necessary attention to said suits. Your complainant further avers that in the multiplicity of suits, actions, complaints and proceedings referred to in this paragraph of your complainant's bill the same question will be involved, and that question can be tried and the merits fairly determined by this Honorable Court sitting in equity in this case.

45 Fourteenth.

The complainant shows to the court that its purpose in this case is by an orderly proceeding in the courts to obtain a judicial determination of its rights under the constitution of the United States, and if as it is advised and believes its just rights in the premises are imperiled, denied and encroached upon by the order of the State Corporation Commission hereinbefore complained of as contrary to the Constitution of the United States then to obtain a judicial decree establishing and protecting the rights of this complainant, and to that end it is essential as alleged in this bill that an injunction shall be issued, but this complainant does not desire in any way injuriously to affect any lawful right of the State or of the people of Virginia, or of any other person, and hereby complainant offers and undertakes to do all in its power to maintain the *status quo* during the course of this judicial inquiry, and accordingly it consents and it prays the court that there may be and shall be adopted herein a proceeding analagous to that provided by sub-section (*e*) of section 156 of the Constitution of Virginia, and that complainant be required to execute a bond conditioned to pay into the registry of this court from time to time, such sum as the court may from time to time direct to be paid, to the end that such sum so paid into the registry of this court may be used by it to pay back to any intrastate passenger the difference between the amount paid by him for his intrastate passage and the amount he would have had to pay under the order of the State Corporation Commission of Virginia, entered on the 27th day of April, 1907, and that complainant be required to give to any person purchasing a ticket for intrastate travel on its lines in the State of Virginia, a coupon or other written evidence from which may be ascertained the sum to which such person will be entitled upon a final decision upholding the constitutionality of said order as may be hereafter ordered by this court, and that to this end complainant be required from time to time to make such reports to the court as may be necessary to enable it to properly carry out the objects aforesaid, and that on a final determination herein that this complainant is entitled to the amount covered by such bond that said bond be released and cancelled, and that if any money shall have been paid into registry of the court pursuant to the orders of said court that upon such determination in favor of the com-

46 plainant the sum or sums so paid into the registry of this court shall be repaid to complainant.

Fifteenth.

This respondent avers that it will be irremediably injured unless an injunction be granted as herein prayed and relief be given to it in this suit.

Prayer.

In consideration whereof and for as much as this complainant is remediless in the premises at law under the rules of the common law and can have relief only in a court of equity where matters of this nature are properly cognizable and relievable, and to the end that the defendants herein named may answer the several matters and things hereinbefore set forth as fully and as particularly as if the same were again herein repeated and they were thereunto interrogated, this complainant prays that an injunction may issue out of this court restraining and enjoining the defendants, Beverley T. Crump, Henry C. Stuart and Joseph E. Willard, and each of them individually and jointly, and as constituting the State Corporation Commission of the State of Virginia and their successors in office, from continuing or taking any further steps to promulgate said order of April 27, 1907, in the matter of prescribing a maximum passenger rate of two cents per mile in the intrastate transportation of passengers over the lines controlled and operated by this complainant, The Chesapeake and Ohio Railway Company, in the State of Virginia, or putting the said order or any part thereof into force and effect on and after the 1st day of July, 1907, or at any time thereafter, so far as the said order relates to the lines of railroad operated by complainant in the State of Virginia or any of its said lines so operated; also enjoining said defendants, last above named, and each of them individually and jointly and as constituting said Corporation Commission of the State of Virginia, to revoke and cancel the said order so far as said order relates to complainant's line of railroad; also restraining and enjoining said defendants, last above named, and each of them individually and jointly and as constituting said State Corporation Commission of Virginia, from instituting or bringing, or causing to be instituted or brought, by or through William A. Anderson, as At-
47 torney General, or by or through special counsel or otherwise, any action, suit, prosecution or other proceeding against your complainant, or any of its officers, agents or employés, to recover any fine, penalty or damages accruing under or imposed by Article 12, section 156 of the Constitution of Virginia, or any act of the General Assembly of Virginia pursuant to said Constitution, and from recommending or permitting the bringing or causing to be brought, instituting, or causing to be instituted, any such action, suit, prosecution or other proceeding for or on account of complainant's failure or refusal to put into force or effect on its lines of railroad in the State of Virginia, or any of its said lines so operated, said order promulgated on the 27th day of April, 1907, or the rates fixed therein as the maximum passenger rate to be observed by this complainant; and further restraining and enjoining the said defendants last above named, and each of them individually and jointly, and as constituting the said State Corporation Commission of Vir-

ginia, from instituting, or causing to be instituted, any proceeding for mandamus, injunction, mandatory injunction, prohibition or other proceeding against your complainant, or against any officer, agent or employé of your complainant to compel your complainant to put into effect or observe said order;

And also restraining the defendant, Richard T. Wilson, Clerk of the State Corporation Commission of Virginia, and his successor in office, from publishing said order, or causing the same to be published, or taking any further steps in relation to the promulgation and publication of said order;

And also restraining the defendant, the Times-Dispatch Company, its owner, proprietor or manager, or any agent of said Times-Dispatch Company, or of such owner, proprietor or manager of said Times-Dispatch Company and any other newspaper and the owner, proprietor or manager and the agent of any such owner, proprietor or manager of any such other newspaper in the city of Richmond, Virginia, and each and every one of them from publishing or having published under the direction of the State Corporation Commission or of the clerk thereof or otherwise said order of the State Corporation Commission.

Also, restraining and enjoining all other individuals, persons or corporations now, or hereafter, claiming any right under or by virtue of said order from instituting, bringing or prosecuting any suit or suits against your complainant for the recovery of
48 damages or for any other cause of action for your complainant's failure to put into effect or observe said order;

And that in the meantime, and until a decision can be had upon complainant's motion for the injunction herein prayed for, a temporary restraining order be granted immediately restraining the acts sought herein to be enjoined; and your complainant avers that there is danger of irreparable injury from delay, if action should not be taken until said motion for an injunction can be heard and determined;

That a writ of injunction be issued commanding and enjoining the defendants as above prayed for;

That on final hearing said injunction as herein prayed for be made perpetual; that said order may be declared null and void by decree of this court so far as the same relates to The Chesapeake and Ohio Railway Company; and that a mandatory injunction may be issued commanding said Beverley T. Crump, Henry C. Stuart and Joseph E. Willard, constituting the State Corporation Commission of Virginia, and their successors in office, to recall, revoke and abolish said order so far as complainant and its railroad lines in the State of Virginia are concerned;

And that complainant may have such other further and general relief as in equity it may appear to be entitled to;

May it please your Honors to grant unto your complainant the temporary restraining order aforesaid, the writ of injunction aforesaid, and the writ of subpœna against said defendants Beverley T. Crump, Henry C. Stuart, and Joseph E. Willard, individually and as constituting said State Corporation Commission of Virginia, Rich-

ard T. Wilson as Clerk of the State Corporation Commission of Virginia, and the "Times-Dispatch Company," commanding said defendants, under a penalty to be therein fixed, to appear in this Court on some certain day, to be therein named, and to answer the premises and abide by and perform such decree as may be passed herein; but to relieve complainant of an undue burden of proof said answer need not be made under oath, as an answer under oath is hereby expressly waived.

49 This is the first application by your complainant for a restraining order or injunction in this case.

THE CHESAPEAKE AND OHIO
RAILWAY COMPANY.
By DECATUR AXTELL, *Vice-President.*

H. T. WICKHAM,
HENRY TAYLOR, JR.,
Solicitors for Complainant.

50–483 STATE OF VIRGINIA, *City of Richmond, ss:*

Personally appeared before me, A. Trevvett, a Notary Public, duly commissioned, qualified and acting as such in and for the State and City aforesaid Decatur Axtell, who, being by me duly sworn, deposes and says:

That he is the Vice President of The Chesapeake and Ohio Railway Company, the complainant in the foregoing bill of complaint; that he has read the foregoing bill and knows the contents thereof; that the facts therein stated as of complainant's own knowledge are true; and that the facts therein stated as upon complainant's information and belief he believes to be true.

DECATUR AXTELL.

Sworn to and subscribed before me this 14th day of May, 1907.

In witness whereof I have hereunto set my hand and affixed my notarial seal at Richmond, in the State of Virginia.

[NOTARIAL SEAL.] A. TREVVETT,
Notary Public.

My Commission expires March 5, 1909.

* * * * * * *

484 *Affidavit of H. W. Fuller, General Passenger Agent of the Chesapeake and Ohio Railway Company, on Behalf of Complainant.*

Filed May 15th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, Complainant,
versus
BEVERLEY T. CRUMP and Others, Defendants.

The affiant, H. W. Fuller, being first duly sworn, states:

That he is the General Passenger Agent of the Complainant The Chesapeake and Ohio Railway Company and as such has charge of and is familiar with the passenger business of the complainant in Virginia and other states; that during the year ended June 30, 1905 and continuously since then and for many years prior thereto The Chesapeake and Ohio Railway Company operated lines of railroad extending into and through the States of Virginia, West Virginia, Kentucky and Ohio.

The affiant further states that The Chesapeake and Ohio Railway Company owns, controls or operates 737.0 miles of railroad in the State of Virginia as of June 30th, 1905, which portion of said road in the State of Virginia forms a part of the continuous system of road of the said The Chesapeake and Ohio Railway Company in the States of Virginia, West Virginia, Kentucky and Ohio;

485 that in addition to intra-state passenger business done by The Chesapeake and Ohio Railway Company in Virginia it also does a large interstate passenger business into and from said State and through said State into and between said States of West Virginia, Kentucky and Ohio and other States in the United States and also does a large business in foreign commerce with other countries.

The affiant further states that he is well acquainted with the passenger tariff of The Chesapeake and Ohio Railway Company as the same is applicable to intra-state business in the State of Virginia; that said passenger tariff is in no respect unjustly or unreasonably high nor greater than the service performed in consideration thereof is justly and reasonably worth and is no greater than will return a fair compensation to The Chesapeake and Ohio Railway Company for the property employed in such intra-state business.

The affiant further states that since said passenger rates were fixed the operating expenses of The Chesapeake and Ohio Railway Company have largely increased; that it is compelled to pay more for the service of its employees and for the purchase of material, supplies of all kinds, equipment, etc., which are necessary to the operation of the said lines of railroad and necessary to the keeping of the same in good, proper and safe condition; and that since the

said passenger rates were fixed The Chesapeake and Ohio Railway Company has greatly improved the character and quality of the passenger service furnished both its intra- and inter-state patrons in Virginia.

The affiant further states that the passenger rates and charges proposed to be put into effect by the State Corporation Commission of Virginia in its order of April 27th, 1907, are unjustly, unreasonably and unfairly low; that the said rates would not furnish to
486 The Chesapeake and Ohio Railway Company a fair just or reasonable compensation for the service rendered and would not afford to The Chesapeake and Ohio Railway Company a fair, just or reasonable return upon its property employed in the service.

The affiant further states that if said rates were put into effect the revenue of The Chesapeake and Ohio Railway Company would be largely reduced and that there would not be any such increase in the amount of its passenger business resulting from the proposed lower rate as would anything like compensate The Chesapeake and Ohio Railway Company for the loss of revenue by the reduction of rates as aforesaid.

The affiant further states that from his knowledge of the situation he does not believe that there would be any appreciable increase in the intra-state passenger business of The Chesapeake and Ohio Railway Company because of the reduction in said passenger rates as proposed by the Order of the State Corporation Commission of Virginia entered April 27th, 1907.

The affiant further states that the existing passenger tariffs of The Chesapeake and Ohio Railway Company are properly adjusted as between its interstate business and its intra-state business in Virginia and in other States; that interstate rates are generally made upon a combination of intra-state rates with other rates and that intra-state rates have at all times a most important bearing and influence upon interstate rates; that the proposed reduction in the intra-state rates of The Chesapeake and Ohio Railway Company in Virginia will result not only in a diminution of revenue from intra-state passenger traffic but in a diminution of revenue from interstate passenger traffic into, out of and through the State of Virginia; that this diminution in its interstate earnings will be material and important and that any reduction at this time in its passenger revenue will seriously embarrass and obstruct The Chesapeake and
487 Ohio Railway Company in providing and will seriously embarrass and obstruct and may possibly deprive it of the power to properly provide such reasonable and proper facilities as the public commerce depending upon it for transportation requires for the movement of traffic, both intra and interstate in Virginia and other States.

H. W. FULLER.

DISTRICT OF COLUMBIA, *City of Washington, To-wit:*

I, E. E. Ramey, a Notary Public in and for the City of Washington, in the District of Columbia, do certify that H. W. Fuller, whose name is signed to the foregoing affidavit personally appeared

before me in my City and District aforesaid and made oath that the statements contained in said affidavit are true.

My commission as Notary Public expires on the 14th day of June, 1909.

Given under my hand and official seal this 13th day of May, 1907.

[NOTARIAL SEAL.] E. E. RAMEY,
Notary Public.

Affidavit of L. F. Sullivan, Comptroller of the Chesapeake and Ohio Railway Company, on Behalf of Complainant.

Filed May 15th, 1907.

In the Circuit Court of the United States for the Eastern
488 District of Virginia. In Equity.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, Complainant,
versus
BEVERLEY T. CRUMP and Others, Defendants.

The affiant, L. F. Sullivan, being first duly sworn, deposes and says:

That he is, and for some years past has been, Comptroller of The Chesapeake and Ohio Railway Company and as such has supervision over its accounts and has charge of its books and that the following is a true statement of the results of the operation of The Chesapeake and Ohio Railway Company in the State of Virginia during the year ending June 30, 1905 under the rates and classification existing at that time:

Gross earnings from operation in Virginia from all sources for said year	$8,411,329.06
Gross earnings from Intra-state Traffic in Virginia from all sources for said year	1,683,913.68
The ratio of total gross intra-state earnings in said State to the total gross earnings in said State for said year was	20.02%

The above mentioned gross earnings in Virginia for said year from intrastate traffic were made up as follows:

From freight	$857,819.07	
From passenger fares, rates and charges	642,143.81	
From parlor cars and excess baggage	21,970.29	
From express	46,935.40	
From U. S. Mail	68,818.44	
From all other sources	43;226.67	
		$1,683,913.68

Under the application of the proposed order of the Commission fixing and prescribing a maximum rate or charge of 2 cents per mile the result on the business for the same year would have been:

From freight	$857,819.07	
From passenger fares, rates and charges	503,826.04	
489		
From parlor cars and excess baggage	24,970.29	
From express	46,935.40	
From U. S. Mail	68,818.44	
From all other sources	43,226.67	
		$1,545,595.91
That the loss in revenue caused to this respondent would have been		$138,317.77
That the expense of earning the gross intrastate revenue for the year ending June 30, 1905, would have been not less than 78.99 cents to earn $1.00, exclusive of taxes.		
That on this basis the maximum net earnings from intrastate traffic for said year without allowing for taxes, was		353,790.26
That on this basis under the application of the proposed order of the Commission the maximum net earnings from intrastate traffic for said year without allowing for taxes would have been		215,472.49
That the taxes chargeable to Virginia properties for the fiscal year ending June 30, 1905 were $305,133.26.		
Intrastate proportion thereof (20.02%)		61,087.68
Improvements and betterments in Virginia not capitalized	$708,154.82	
Intrastate proportion (20.02%)		141,772.59
Making total intrastate proportion of taxes, improvements and betterments not capitalized		$202,860.27
Leaving net intrastate earnings from operation in the State of Virginia for said year		150,929.99
As above shown, under the proposed order the maximum net earnings from said intrastate traffic for said year would have been		215,472.49

Deducting therefrom the proportion of the total reduced taxes chargeable in Virginia as applicable to intrastate traffic in the ratio of reduced intrastate gross earnings to reduced total gross earnings 18.68%, viz.	$56,884.87	
And deducting the same percentage of reasonable betterments not capitalized during the same year chargeable to Virginia, viz.	132,283.62	
		189,168.19
Leaves maximum net earnings in Virginia		26,304.30
490 The value of the physical properties of this company in Virginia according to the assessment made by the State for purposes of taxation was for said year		$15,135,857.00
The franchise tax capitalized at the same rate of taxation imposed upon its physical properties viz: 35 cents on the hundred dollars would show a value for said year of		24,190,000.00
Or a total of		$39,325,857.00
Taking 20.02 per cent. (the ratio which the intrastate gross earnings in Virginia bear to the total gross earnings in Virginia) thereof, the value of the property used in Virginia for intrastate business for purposes of taxation is		7,873,036.57
That upon this valuation the net amount earned under existing passenger rates, fares and charges for said year from its intrastate business in Virginia after deducting the proportion of taxes and betterments properly chargeable against such intrastate earnings, amounts to		1.92%
Taking 18.68 per cent. (the ration which the gross reduced intrastate traffic earnings in Virginia bear to the reduced total gross traffic earnings in Virginia) of said $39,325,857.00 tax value of property in Virginia as aforesaid, the value of the property used in Virginia for intrastate purposes on the basis of the Virginia assessment for purposes of taxation is shown to be		7,346,070.08
And upon this valuation the net amount earned by this respondent under the proposed passenger rates, fares and charges from its intrastate business in the State of Virginia for said year after deducting the proportion of taxes and betterments properly chargeable against such		

intrastate earnings, viz: 18.68 per cent., would have amounted to only 0.35%
And on the said proportion of the tax assessment of the physical properties alone, would amount to only 0.93%

The affiant further says that the foregoing results of operation in the State of Virginia for the year ended June 30, 1905 show a relatively larger net result to the Company than is fairly representative of the results of the company's operation in the future for the reason that since the 30th day of June 1905 there has been a
491 large increase in the expenses of the Company due to increase in wages and to the increase in cost of all material and supplies of all kinds, equipment, etc. as will be shown by the following statement for the system of such increase since the 30th day of June 1906, namely:

For the six months ended December 31, the gross earnings have increased over the same period of the previous year $719,244.09
Whereas the operating expenses and taxes increased for the same period 742,196.36
Showing a decrease in net earnings for the six months mentioned of 22,952.27

In addition to the foregoing increases in wages and other expenses, the Company has been obliged to accept large increases in wages since the first of January 1907. While the above figures are for the System, a proportionate part of said increases in expenses would apply to Virginia.

L. F. SULLIVAN.

STATE OF VIRGINIA, *City of Richmond, To-wit:*

I, Columbus A. Canepa, a Notary Public in and for the City and State aforesaid, do certify that L. F. Sullivan, whose name is signed to the foregoing affidavit, personally appeared before me in my City and State aforesaid, and made oath that the statements contained in the said affidavit are true.

Given under my hand and official seal this 13th day of May, 1907.
My commission expires Sept. 17, 1907.

[NOTARIAL SEAL.] COLUMBUS A. CANEPA.
Notary Public.

492 *Temporary Restraining Order.*

Entered and Filed May 15th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, Complainant,
versus
BEVERLEY T. CRUMP and Others, Defendants.

Upon reading the verified bill in this cause, and upon its being made to appear to the Court that there is danger of irreparable injury to the complainant from delay, unless the acts sought to be enjoined herein are restrained until a hearing upon the motion for an injunction in this cause, it is now ordered:

1. That the defendants, Beverley T. Crump, Henry C. Stuart, and Joseph E. Willard, individually and as constituting the State Corporation Commission of Virginia, and each and all of their successors in office, their and each of their servants, agents and employees, be, and they are, hereby restrained and enjoined from publishing, or having published, in any newspaper published in the City of Richmond the general order of the State Corporation Commission bearing date the twenty-seventh day of April, 1907, in respect to passenger rates, in the bill in this cause mentioned, and from taking any other step or steps whatsoever under the Constitution or laws of Virginia to enforce the requirements of the said order.

2. That the defendant R. T. Wilson, Clerk of the State Corporation Commission, and his successors in office, and his agents,
493 servants and employees, be, and they are, hereby restrained and enjoined from publishing or having published the said order of the State Corporation Commission in any newspaper published in the City of Richmond, Virginia.

3. That the Times-Dispatch Company, its owner, proprietor or manager, or any agent of said Times-Dispatch Company, or of such owner, proprietor or manager of said Times-Dispatch Company, and any other newspaper and the owner, proprietor or manager and the agent of any such owner, proprietor or manager of any other newspaper in the City of Richmond, Virginia, be, and they are, and each and every one of them is, hereby restrained and enjoined from publishing, or having published, under the direction of the State Corporation Commission, or of the Clerk thereof, such order of the State Corporation Commission.

4. That the defendants and each of them show cause before this court in the United States Court Room at Asheville, N. C., at ten o'clock a. m. on Thursday, the 27th day of June, 1907, why an injunction *pendente lite*, as prayed in the bill, should not be issued, and that a copy of this order be served as soon as practicable upon each of the defendants.

5. That this restraining order shall be in force and effect from the date hereof, and until the determination of the complainant's

motion for an interlocutory injunction herein; provided, however, that upon the failure of the complainant or some one for it, to execute, within ten days from this date, a bond in a penalty of Ten Thousand Dollars, payable to the defendants, with surety approved by one of the judges of this court, and conditioned substantially as hereinafter mentioned, the said restraining order shall stand dissolved. The condition of said bond shall be substantially as follows:

"The condition of the above obligation is such that

Whereas a restraining order has been made in the above entitled cause, by the terms of which the defendants, and each of
494 them, are restrained, until an application for an interlocutory injunction herein shall be determined, from doing or causing to be done, certain acts mentioned in said restraining order; now should said restraining order be dissolved or vacated as having been wrongfully issued or because the said acts were improperly restrained, then that the above named The Chesapeake and Ohio Railway Company shall pay, or cause to be paid, all damages caused by the issue of said restraining order and the costs of this cause in connection therewith."

6. That, if for any *any* reason the determination of the motion for an injunction *pendente lite* be not made until after July 1, 1907, the date fixed in the said order of the State Corporation Commission of Virginia for the rates thereby prescribed to go into effect, then the complainant shall, prior to that date, apply to this court, or a judge thereof, for an order directing the giving of a bond by the complainant as prayed for in the fourteenth paragraph of the bill in this cause, to secure the payment into the registry of this court, in case the said order of the Commission herein complained of is in this cause finally declared valid and constitutional, of the excess which the complainant may receive on business covered by said order, over the amount it would have been entitled to receive on the basis of charges fixed by said order.

May 15th, 1907.

J. C. PRITCHARD,
United States Circuit Judge.

And thereupon came the above named complainant and filed the bond as provided in this order, which bond was this day ap-
495 proved by a judge of this court as a full compliance with the provision thereof requiring the giving of a bond.

May 15th, 1907.

J. C. PRITCHARD,
United States Circuit Judge.

Marshal's Return.

Executed May 15th 1907 by delivering in person to R. T. Wilson at the office of the State Corporation Commission of Virginia in the city of Richmond, Va., a true copy of this order, and further executed on the 16th day of May 1907 by delivering in person to Beverley T. Crump and Henry C. Stuart at the office of the State

Corporation Commission of Virginia in the city of Richmond, Va., and to J. St. George Bryan in person at the office of the Richmond Times-Dispatch Company in the city of Richmond, Va., the said J. St. George Bryan being the Secretary and Treasurer of the said Richmond Times-Dispatch Company—the President of the said Richmond Times-Dispatch Company not being found, and to Alfred B. Williams in person in the city of Richmond, Va., at the office of the News-Leader a newspaper published in the city of Richmond, Va., he being the President of the said News-Leader, and to Charles B. Cooke in person in the city of Richmond, Va., at the office of the Evening Journal a newspaper published in the city of Richmond, Va., he being the President of the said Evening Journal, to each a true copy of this order, and further executed on the 23rd day of May 1907, by delivering in person to Joseph E. Willard at the office of the State Corporation Commission of Virginia in the city of Richmond, Va., a true copy of this order.

MORGAN TREAT,
United States Marshal.

496 *Bond.*

Filed May 15th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, Complainant,
versus
BEVERLEY T. CRUMP and Others, Defendants.

Know all men by these presents that The Chesapeake and Ohio Railway Company, a corporation of the State of Virginia, the principal office of which is in the City of Richmond in said State, as principal, and The Virginia Trust Company, as surety, are held and firmly bound unto the defendants, Beverley T. Crump, Henry C. Stuart, Joseph E. Willard, R. T. Wilson, and the Times-Dispatch Company in the just and full sum of Ten Thousand Dollars, for the payment of which well and truly to be made we do hereby jointly and severally bind ourselves and each of our successors firmly by these presents.

Sealed with our seals and dated this 15th day of May in the year 1907.

The condition of this obligation is such that

Whereas a restraining order has been made in the above entitled cause by the terms of which the defendants, and each of them, are restrained until an application for an interlocutory injunction herein shall be determined, from doing or causing to be done certain acts mentioned in said restraining order; now should said restraining order be dissolved or vacated as having been wrongfully
497 issued, or because the said acts were improperly restrained, then, if the above named The Chesapeake and Ohio Railway

Company shall pay, or cause to be paid all damage caused by the issue of said restraining order, and the costs of this cause in connection therewith, then this obligation to be null and void, otherwise to be and remain in full force and effect.

In testimony whereof the parties hereto have caused these presents to be duly signed in their respective names and their respective seals to be hereunto affixed, duly attested, this 15th day of May in the year 1907.

[Seal of the Chesapeake and Ohio Railway Company.]

THE CHESAPEAKE AND OHIO
RAILWAY COMPANY,
By DECATUR AXTELL, *Vice-President.*

Attest:
C. E. WELLFORD, *Secretary.*

[Seal of the Virginia Trust Company.]

THE VIRGINIA TRUST COMPANY,
By MANN S. QUARLES, *Vice-President.*

Attest:
L. D. AYLETT, *Secretary.*

Approved as a full compliance with the provision of the restraining order entered in this cause on the 15th day of May 1907, requiring the giving of a bond.

J. C. PRITCHARD,
United States Circuit Judge.

May 15th, 1907.

498 *Chancery Subpœna.*

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

The President of the United States of America to Beverley T. Crump, Henry C. Stuart, Joseph E. Willard, individually and as constituting the State Corporation Commission of Virginia, and R. T. Wilson, Clerk of the State Corporation Commission of Virginia, and the Times-Dispatch Company, Greeting:

We command you, and every one of you, that you appear before our judges of our Circuit Court of the United States of America, for the Eastern District of Virginia, at the Court Room in the Custom House in the City of Richmond, in said District, on the first Monday in the month of July next, to answer the Bill of Complaint of Chesapeake and Ohio Railway Company this day filed in the Clerk's Office of said Court, in said City of Richmond, then and there to receive and abide by such judgment and decree, as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the Eastern District of Virginia to execute:

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond aforesaid;

this 15th day of May, in the year of our Lord one thousand nine hundred and seven, and of our Independence the 131st.

[Seal of United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY, *Clerk.*

499 MEMORANDUM.—The above-named defendants are notified that unless they enter their appearance in the Clerk's Office of said Court, at Richmond aforesaid, on or before the day to which the above writ is returnable, the Complaint will be taken against them as confessed, and a decree entered accordingly.

JOSEPH P. BRADY, *Clerk.*

Marshal's Return.

Executed May 15th, 1907, by delivering in person to R. T. Wilson at the office of the State Corporation Commission of Virginia in the city of Richmond, Va., a true copy of this subpœna together with a certified copy of the Bill of Complaint filed in this cause, and further executed May 16th, 1907, by delivering in person to Beverley T. Crump and Henry C. Stuart at the office of the State Corporation Commission of Virginia in the city of Richmond, Va., and to J. St. George Bryan in person in the City of Richmond, Va., at the office of the Richmond Times-Dispatch Company in the city of Richmond, Va., the said J. St. George Bryan being the Secretary and Treasurer of the said Richmond Times-Dispatch Company and likewise a Director in the said Richmond Times-Dispatch Company, the President of the said Richmond Times-Dispatch Company not being found, a true copy of this subpœna together with a certified copy of the Bill of Complaint filed in this cause, and further executed on the 23rd day of May, 1907, by delivering in person to Joseph E. Willard at the office of the State Corporation Commission of Virginia in the city of Richmond, Va., a true copy of this subpœna together with a certified copy of the Bill of Complaint filed in this cause.

MORGAN TREAT,
United States Marshal.

500 *Joint and Separate Answer of Defendants to Rule to Show Cause Why a Temporary Injunction be Not Awarded.*

Filed June 27th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

CHESAPEAKE & OHIO RAILWAY COMPANY, Complainant,
v.
BEVERLEY T. CRUMP, H. C. STUART, and JOSEPH E. WILLARD (Individually and as Constituting the State Corporation Commission of Virginia) and R. T. WILSON (Clerk of the State Corporation Commission), Defendants.

Joint and Separate Answer of said Defendants to a Rule to Show Cause Why a Temporary Injunction be Not Awarded.

The joint and separate answer of the above named defendants to a rule, heretofore awarded in this cause and duly served upon
501 them, requiring them, and each of them, to show cause, before this court, in the United States court-room at Asheville, North Carolina, at 10 o'clock a. m., on the 27th day of June, 1907, why an injunction *pendente lite*, as prayed in the bill of the above named plaintiff, should not be issued.

These respondents (saving and reserving to themselves, jointly and separately, the right to all just and proper exceptions and defenses which they, or any of them, have, or may have, to this cause, either as to the form or as to the substance thereof, and without waiving any valid objection, or objections, which they, or any of them have, or may have, to the jurisdiction of this Honorable Court in this cause, but, on the contrary, expressly denying any such jurisdiction), for answer to said Rule, say:

First. That said city of Asheville, in the State of North Carolina, was and is beyond the territorial jurisdiction of this Honorable Court; and, therefore, as said defendants are advised and respectfully insist, this Honorable Court cannot lawfully assemble, convene, sit, receive or hear answers, motions or pleadings of the litigants in this cause, nor take any action whatever therein, at the said city of Asheville, and that this Honorable Court, and each of the Honorable Judges thereof, was and is without jurisdiction to issue said Rule, or any Rule whatsoever, returnable before this Honorable Court at said city of Asheville; and said defendants are advised and respectfully insist that, for these reasons, said Rule was and is void and of no effect, and that these defendants ought not, nor, ought any of them, to be held or required to further answer the same.

Second. That the said defendants, Beverley T. Crump, H. C. Stuart, Joseph E. Willard, and R. T. Wilson, have not, nor hath either of them, any personal, private or individual interest in, or connection with, the subject matter of this suit; but, on the contrary,

none of them ever was interested therein, or connected therewith, except in his public and official capacity and character, as
502 follows: The said Crump, Stuart and Willard, at the time of the institution of this suit, constituted the State Corporation Commission of Virginia, a Department of the Government of that State, as hereinafter more fully set forth, and the said R. T. Wilson was the Clerk of said Commission; and it is only in their respective public and official characters or capacities as Members and Clerk of said Commission that said defendants, or any of them, ever were interested in, or connected with, the subject matter of this suit—the acts, against which an injunction is prayed for in the Bill, being acts which could not possibly be performed by said defendants, or any of them, except in their said official capacities or characters, and not otherwise. The said State Corporation Commission is one of the principal Departments of the Government of the State of Virginia, and was created and established, and its functions, powers, duties and methods of procedure prescribed and provided for, by the Constitution and Statutes of said State, as will more fully appear from the One Hundred and Fifty-fifth Section, and the One Hundred and Fifty-sixth Section of the Constitution of the said State, and from the Act of the General Assembly of said State, entitled:

"An Act to put into effective operation the provisions of the Constitution relating to the creation, appointment, and organization of the State Corporation Commission, its jurisdiction, powers and duties; the qualification of its members and officers thereof, their appointment and salaries; the location of its offices and places and times of its public sessions; *its writs, processes, orders, findings and judgments; appeals from its orders, findings, and judgments and its expenses, &c.*",

which was approved April 15th, 1903; of which said constitutional provisions and statute, complete copies, duly certified by the Secretary of the Commonwealth of Virginia, under the Lesser Seal of said Commonwealth, are filed, and prayed to be taken and read
503 by this Honorable Court, along with, and as parts of, this answer, said copies being marked, respectively, "Defendants' Exhibit No. 1", and "Defendants' Exhibit No. 2". The said constitutional provisions and statute, as set forth in said copies thereof, together with two other statutes of said State, of which true copies, similarly certified, are herewith filed, marked respectively, "Defendants' Exhibit A", and "Defendants' Exhibit B", and prayed to be taken and read as parts of this answer, are (as set forth in said certificates of the Secretary of the Commonwealth attached to said copies) still in full force and effect, and have been so continually since prior to January 1st, 1904, and these defendants aver that they represent the entire constitutional, and statutory, provisions of the State of Virginia on the subject, in effect from January 1st, 1904, to the present time. From these constitutional, and statutory, provisions it will clearly appear, as these defendants respectfully submit, that (except in certain cases of mandamus or prohibition) said State Corporation Commission has no more power, under the laws of Virginia, of suing or being sued, or of pleading or of being impleaded,

in any court of law or chancery, than has the General Legislature, or Supreme Court of Appeals, of that State. In view, therefore, of the matters and things set forth and referred to in this Clause Second of their Answer to said Rule, these defendants are advised and respectfully insist, that this suit is such a suit against the State of Virginia, as this Honorable Court was, and is, without jurisdiction to entertain, or to enter any order or decree, or to take any other action therein, except to dismiss the same; and these respondents, therefore, respectfully insist that they ought not to be held or required to further answer the same.

Third. That, in the said proceedings before the State Corporation Commission of Virginia, in which said order of April 27th, 1907, was entered, the Commonwealth of Virginia was required by law to be the plaintiff, and, as a matter of fact, was the plaintiff therein, both in form and in substance; that, by the said Constitution and laws of Virginia, an appeal can be taken from said order of
504 April 27th, 1907, to the Supreme Court of Appeals of Virginia, by the Commonwealth of Virginia, as appellant, or it can be taken by the said plaintiff herein, as appellant, in which latter case, however, it is provided and required by the said Constitution and laws of Virginia, that the said Commonwealth of Virginia must be made the appellee; and these defendants are advised and respectfully insist that this proceeding now here pending, to suspend and set aside, or, at any event, to review the said order of April 27th, 1907 (in which the Commonwealth of Virginia is plaintiff, as aforesaid, from which the said Commonwealth of Virginia may take an appeal, as aforesaid, and from which the said plaintiff herein can also take an appeal, as aforesaid, but only by making the said Commonwealth of Virginia the appellee therein), is in substance and effect such a suit against the Commonwealth of Virginia as this Court is without jurisdiction to entertain; therefore, and for this reason also, these respondents are advised and respectfully insist that this Honorable Court was, and is, without jurisdiction to entertain this suit, or to enter any order or decree, or to take any other action herein, except to dismiss the same; and these respondents, therefore, respectfully insist that they ought not to be held or required to further answer the same.

Fourth. That, on the first day of June, 1907, the said Beverley T. Crump, who, up to that time, had been a Member, and the Chairman of the said State Corporation Commission of Virginia, did (pursuant to his previous resignation) retire from said Commission and cease to be the Chairman, or a Member thereof; that, thereupon, his place as a Member of said Commission was forthwith filled by the Honorable Robert R. Prentis, who had been duly appointed, according to law, by the Honorable Claude A. Swanson, Governor of Virginia, to fill the vacancy caused by the said resignation of said defendant Crump, and who has duly qualified as a Member of said Commission according to law; that, upon so taking office as a Member of said Commission, the said the Honorable Robert R. Prentis, was, by the Members of said Commission, duly elected, according
505 to law, Chairman of said Commission, and forthwith qualified as such, since which time, to-wit, since the first day of June,

1907, the said Commission has continuously been, and still is, composed of the said the Honorable Robert R. Prentis and said defendants Stuart and Willard, as the sole Members thereof, the said Prentis being the Chairman of said Commission, as aforesaid; that said Crump, having, on June 1st, 1907, ceased, as aforesaid, to be a Member of the said Commission, has not been at any time since the 1st day of June, 1907, in any manner whatsoever, connected with said Commission, and, therefore, is no longer interested in, or in any way connected with, the subject matter of this suit; and said defendant Crump, having, by said termination of his connection with said Commission, become incapable of performing, or of, in any manner, controlling or participating in, any of the acts against which said injunction is prayed for, he is advised and respectfully insists that, in any event, this suit should be no longer maintained as to him, and that he should accordingly be hence dismissed as one of the defendants herein.

Fifth. That the said defendants have not, nor have any of them, any personal, private or individual interest in or connection with, *with* the subject matter of this suit, but are only interested therein, or connected therewith, insofar as they constitute the State Corporation Commission of Virginia and the Clerk of said Commission; that the said State Corporation Commission of Virginia was created and established, and its functions, powers, duties and procedure prescribed and provided for, by the Constitution and Statutes of said State, as will more fully appear from the One Hundred and Fifty-fifth Section, and the One Hundred and Fifty-sixth Section, of the Constitution of said State, and from the Act of the General Assembly of said State, entitled:

"An Act to put into effective operation the provisions of the Constitution relating to the creation, appointment and organization of the State Corporation Commission, its jurisdiction, powers
506 and duties; the qualification of the Members and officers thereof, and their appointment and salaries; the location of its offices and places and times of its public sessions; *its writs, processes, orders, findings and judgments; appeals from its orders, findings, and judgments, and its expenses, &c.*."

which was approved April 15th, 1903; of which said constitutional provisions and statute, complete copies, duly certified by the Secretary of the Commonwealth of Virginia, under the Lesser Seal of said Commonwealth, are (as heretofore stated) filed, and prayed to be taken and read by this Honorable Court, along with, and as parts of, this Answer—said copies being marked, as aforesaid, "Defendants' Exhibit No. 1" and "Defendants' Exhibit No. 2," respectively; that the said constitutional, and statutory, provisions, as set forth in said copies thereof, are, together with said other two statutes of said State, of which true copies, similarly certified, are (as heretofore stated) filed with this answer, marked, respectively, "Defendants' Exhibit A" and "Defendants' Exhibit B," and prayed to be taken and read as parts of this Answer, (as set forth in said certificates of the Secretary of the Commonwealth, attached to said copies) still in force and effect, and have been in full force and effect continuously since prior

to the first day of January, 1904, and these defendants aver that they represent the entire constitutional, and statutory, provisions of the State of Virginia on the subject, in effect from the first day of January, 1904, to the present time; that, on the 6th day of October, 1903, Rules of Order, Practice and Procedure before the said State Corporation Commission of Virginia were duly made and prescribed by said Commission and entered upon the records of its proceedings and printed and distributed according to law; that a full, complete and true copy of said Rules of Order, Practice and Procedure, as they have existed since the first day of January, 1904, to the present time, and still exist, duly certified by the Chairman and Clerk of said Commission under the seal of said Commission, and further veri-
507 fied by the affidavit of said R. T. Wilson, is filed, and prayed to be taken and read by this Honorable Court, along with, and as a part of, this Answer—the said copy being marked "Defendants' Exhibit No. 3"; that the proceedings before the said State Corporation Commission which are referred to in the plaintiff's Bill, and in which the said order in respect to the passenger rates of the plaintiff was entered by the said Commission on the 27th day of April, 1907, were taken and had before the said Commission in strict conformity, in every respect, with the provisions hereinbefore mentioned of the Constitution and Statutes of the State of Virginia, and with the said Rules of Order, Practice and Procedure before the said State Corporation Commission; that the initial step in said proceedings was, as set forth in the Bill herein, a Notice, of which the following is a copy:

"*Notice.*

Office of the State Corporation Commission.

RICHMOND, VA., 31*st Day of July*, 1906.

To the Several Steam Railroad Companies Doing Business in Virginia and all Persons Interested:

Take notice that the State Corporation Commission will, in the city of Richmond, on Thursday, the first day of November, 1906, at 12 o'clock, noon, in accordance with the authority conferred by the Constitution of Virginia and the statutes enacted by the General Assembly of Virginia pursuant thereto, hear and consider any objections which may be urged against a rule, regulation, order or requirement of the Commission fixing and prescribing a maximum rate of charge of two cents per mile for the transportation of passengers over the line of any railroad company in this State, operated by steam, between points within the State of Virginia, said maximum rate to be observed whether the transportation be entirely over the line of one railroad company, or joint transportation over the
508 lines of two or more companies; and whether the contract for transportation of a passenger or passengers be evidenced by an ordinary ticket between stations, by a mileage book or otherwise; the Commission to have, as authorized by law, the power and authority from time to time, and as often as circumstances may require, to change or revise the rate, or, by rules, regulations and require-

ments, to provide for the more convenient and expedient putting into effect and proper observance of said maximum rate. At the said hearing and consideration of the said maximum rate of two cents per mile, the method, time and extent of promulgation and putting into effect of the same will be heard and determined by the Commission, to the end that a maximum rate for passenger transportation may be put into effect and be made applicable to all steam railroad companies doing business in Virginia, and be properly observed by them in the transportation of passengers.

BEVERLEY T. CRUMP, *Chairman;*
H. C. STUART,
JOSEPH E. WILLARD,
Commissioners."

That said Notice was forthwith duly published according to law once a week, for four consecutive weeks, in the Times-Dispatch, a newspaper of general circulation published in the city of Richmond; that, in accordance with said Notice the said plaintiff herein appeared before the said State Corporation Commission of Virginia at the time and place fixed by said Notice, to-wit, on the first day of November, 1906, at 12 o'clock, noon, at Richmond, Virginia, and filed its Answer, a copy of which is filed with the Bill in this cause, marked "Exhibit C"; that in its said Answer, as will be more fully seen from said "Exhibit C" with the plaintiff's Bill herein, the following five grounds of defense were set up and relied upon (they being the identical grounds (with two or three immaterial exceptions)
509 upon which the plaintiff here seeks to attack and overthrow the order of the Commisison in that proceeding), to-wit:

1st. That, because of the fact that the said Corporation Commission was clothed with Legislative, Judicial and Executive powers, its dealings with the said plaintiff herein, in respect to the regulation of its rates, would not amount to *due process of law;* and that, for the same reason, said plaintiff herein, if compelled to submit to the jurisdiction of said Commission in the premises, would be denied the *equal protection of the laws;*

2nd. That, by reason of certain previous Acts of the General Assembly of Virginia, that State could not, through any instrumentality, regulate the rates of said plaintiff herein, under existing conditions, without *impairing the obligation of the State's alleged Contract with said Company;*

3rd. That *any* regulation of the intra-state passenger rates of said Company would, of necessity, amount to a regulation of the interstate passenger rates of said Company, in violation of the *Commerce Clause* of the Constitution of the United States;

4th. That the suggested rate would, if imposed upon the Company, be *confiscatory of its property;* and

5th. That the existing rates of the Company were *fair and reasonable.*

That, thereupon, the said Commission entered into a most elaborate consideration and investigation of each of the questions of law and of fact raised by said Notice and said Answer; that, as will more fully appear by the affidavit of the said R. T. Wilson,

Clerk of said Commission, herewith filed, and prayed to be
510 taken and read by this Honorable Court along with, and
as a part of this Answer, marked "Defendants' Exhibit No. 4," the Commission spent many days in the hearing of the matters involved in said Notice and Answer, at which hearing the said complainant herein appeared and made an elaborate defense, introducing testimony covering several thousand pages of record; that said hearing was not concluded until the said plaintiff herein had, through its counsel, announced that its case was complete; that, after the said hearing had concluded, to-wit, on the 27th day of April, 1907, said State Corporation Commission entered its order in said proceedings fixing the maximum rates of the said plaintiff herein for the transportation of passengers in its intra-state Virginia business, which order is set out at length in the plaintiff's Bill, but, at the time of entering said order, and along with the same, and as a part of the official and legal record of said proceedings, the said Commission filed an elaborate opinion which thereby became, and was, and still is (in accordance with law), a part of the official record of said proceedings, a true copy of which opinion will be found in the copy of said official record hereinafter filed, marked "Defendants' Exhibit No. 5," and is prayed to be taken and read by this Honorable Court, along with, and as a part of this Answer; that, in accordance with the requirements of law, and of the uniformly established custom and practice in all such cases, a written record of all the proceedings (except the evidence) in said matter, from its inception up to and including said order of April 27, 1907, was duly made in the regular official "judicial order book" of the Commission by its Clerk and signed by its Chairman in exactly the same manner in which records of their proceedings are made, verified and preserved by the ordinary judicial courts of the State of Virginia; that the said "judicial order book" of the Commission and its contents are public records under the laws of Virginia just as are the order books of ordinary judicial courts of that State—said record, however, in its present shape does not now include the evidence in the cause,
but all the documents and all oral testimony (of which latter
511 a complete stenographic report is preserved by the Commission) constituting such evidence *is* in the custody of the Commission, and preserved by it to be hereafter made a part of the record and as such to be duly certified by the Commission along with the other parts of the record, to the Supreme Court of Appeals of Virginia, upon the taking of an appeal from said order of April 27, 1907, in case such appeal be taken; that a complete and true copy of the record of said proceedings, as it appears upon said judicial order book of the Commission (verified by the affidavit thereto attached of said R. T. Wilson, Clerk of said Commission) is herewith filed, marked "Defendants' Exhibit No. 5," and is prayed to be taken and read by this Honorable Court along with, and as a part of, this Answer; that, as above stated, all of the documentary evidence, and a full stenographic report of all the oral testimony adduced in said proceedings—amounting to several thousand pages—*is* preserved by the Commission in its archives ready to be made a part of the record of said proceedings and certified as such, by the Commission, ac-

cording to law, along with the residue of the record of the case, to the Supreme Court of Appeals of Virginia, upon an appeal to that tribunal from the said proceedings before said Commission, including its said final order therein of April 27, 1907, which appeal, either the Commonwealth, or said plaintiff Company herein, may, as aforesaid, under the express provisions of the laws of Virginia, take as of right, but which neither has yet taken nor applied for; and said defendants say that the said State Corporation Commission of Virginia was, and is, and always has been (particularly with respect to the said order of April 27, 1907, and the said proceedings in which said order was entered), a "court" of the State of Virginia, within the true meaning, purport, intent and purview of Section 720 of the Revised Statutes of the United States, which provides, that,

"A writ of injunction shall not be granted by any court of the United States to stay proceedings in *any* court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in Bankruptcy";

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and that this suit is not a case within the exception specified in the said Section 720 just quoted. Therefore, and because of the matters and things set forth or referred to in this Fifth Clause of this Answer, these defendants are advised and respectfully insist that this Honorable Court is without any jurisdiction to entertain this suit, or to enter any decree or order, or to take any other action, herein (save to dismiss the suit), because, as these defendants insist the sole object of this suit, and the sole ground upon which the equitable interference of this court is prayed, is the obtaining of an injunction which, if obtained, would be, (as these defendants are advised and respectfully insist) in violation of the express provisions of the said statute of the United States last above mentioned; and these respondents, therefore, respectfully insist that they ought not to be held or required to further answer in this cause;

Sixth. That, under the Constitution and laws of the State of Virginia, as set forth in the Exhibits herewith filed, the State Corporation Commission of Virginia is expressly made a judicial court for the enforcement, by its own appropriate process, of compliance with the requirements of its said order of April 27th, 1907; and it is not requisite, necessary nor appropriate for the said Commission to bring suit, nor has it the power of suing, in any other tribunal, for the enforcement of any of its orders, nor is the said Commission, in the supervision, regulation or control of Railroad Companies, authorized, to prosecute or defend litigation of any kind, in any tribunal, for any purpose. Therefore, and for this reason also, these defendants are advised and respectfully insist that the injunction prayed for in the plaintiff's Bill to restrain the said Commission and its members from taking any steps to enforce the said order of April 27th, 1907, would, if granted, have only the effect of restraining and enjoining a judicial court of the State of Virginia from enforcing by its own appropriate process, compliance with an order theretofore issued by it within the limits of its jurisdiction, and from which no appeal lies to this court, and over which this court has no power of review; these respondents, therefore, re-

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spectfully insist that this Court was, and is, without jurisdiction to entertain this suit, or to enter any order or decree, or to take any other action herein, except to dismiss the same; and these respondents, therefore, respectfully insist that they ought not to be held or required to further answer the same.

Seventh. That no persons are, or can be, impleaded in this cause with whom the plaintiff herein may legally or properly litigate the question of the reasonableness or validity of the rates imposed upon the plaintiff by said order of April 27th, 1907. These defendants have not, nor have any of them, any personal, private, or individual interest in that question, which would authorize them as individuals to litigate the same, nor are they, or any of them, by law, charged with the duty, or clothed with the power, in any official or public capacity or character, of conducting or defending any such litigation in any court whatsoever; the said State Corporation Commission, as a public body, in the exercise of its power under said constitutional provisions, is wholly without any power or authority of law to prosecute or defend suits, actions, or proceedings of any kind, or to appear as a suitor for any purpose, in any court whatsoever,—as much so as is the Supreme Court of Appeals, or the General Assembly, of Virginia; and, finally, the Commonwealth of Virginia has not consented to be impleaded in this Honorable Court for the purpose of litigating the question of the reasonableness or legality of the said rates prescribed by the said order of April 27th, 1907. Therefore, for this reason also, these defendants are advised and respectfully insist, that this Honorable Court is without jurisdiction to entertain this suit, or to enter any order or decree, or to take any further action therein, except to dismiss the same;
514 and these respondents, therefore, respectfully insist that they ought not to be held or required to further answer the same.

Eighth. That before said hearing was concluded by said Commission in said proceedings, to-wit, on March 16th, 1907, the Commission gave a written notice to each of the counsel, of record in said proceedings, for the Railroad Companies which had appeared therein, including the plaintiff herein, said notice being in the form of a letter addressed by said Commission to each of said counsel by name, of the body of which letter the following is a copy:

"GENTLEMEN: We are addressing this communication to all the counsel of record in the proceedings before the Commission against the steam railroads of the State, relative to prescribing a maximum passenger rate of two cents per mile, in order to notify all counsel as follows: This proceeding will be called on Wednesday, the 27th inst. at eleven o'clock in the morning, in the court room of the Commission, at which time the hearing will be resumed and continued until completed. Counsel for the Commonwealth will be expected to be fully prepared to submit to the Commission all evidence, oral or documentary, which they may desire to put in on behalf of the Commonwealth. The defendant railroad companies will be expected to be prepared to put in any further evidence, or bring before the Commission any further fact which they may desire the Commission to consider in this proceeding. At the close of the evidence on both sides, the Commission will be prepared to hear argument on the

issues arising in this proceeding, to the end that, at the sitting of the Commission, commencing on the 27th day of March, this proceeding will be carried on consecutively from day to day until concluded and submitted to the Commission for its consideration and action."

515 That accordingly, on March 27th, 1907, the Commission again assembled in public session for the final hearing of said proceeding, and after the Chairman of the Commission had read aloud at said session of the Commission, the above notice, the further taking of evidence in said proceeding was resumed, and the hearing by the Commission was not concluded until the counsel for the said plaintiff herein had announced that his client had nothing more to say or offer in its behalf; and these defendants are advised and respectfully insist, that whether the said State Corporation Commission of Virginia be regarded as a judicial, a legislative or an administrative tribunal, or as a combination of any two or more of such bodies, yet the said proceedings, which resulted in the said order of April 27th, 1907, and which are the regular proceedings prescribed by the Constitution and laws of the State of Virginia and the regularly established practice of the said Corporation Commission in all such cases, constituted due process of law as to the said plaintiff herein, within the true intent and meaning of the Fourteenth Amendment of the Constitution of the United States; and these respondents are further advised and respectfully insist that the said plaintiff herein, having been duly made a party to said proceedings, and having appeared and made therein a full defence and submitted the matter to the Commission for its decision and action (as, these defendants aver, the said plaintiff herein did do), and the said Commission, having, thereupon, decided the questions involved in said proceedings and so submitted to it for decision, and having taken action upon the matter as set forth in its said order of April 27th, 1907, the said plaintiff herein thereupon became, was, and is, bound by that decision and action of the Commission and cannot now ignore nor disregard the same, but must appeal from it in the manner provided by law, or else abide by, and obey, it; and these defendants are further advised and respectfully insist, that this Honorable Court, being without jurisdiction to entertain an appeal from said order of

516 April 27th, 1907, is equally without jurisdiction to ignore, disregard, reverse, or overrule the same, and that to enjoin the enforcement of that order by the tribunal which entered it and which, by the laws of Virginia, is alone charged with the enforcement of that order, is tantamount to, and in substance, and effect, the same as, to ignore, disregard and overrule that order; and these defendants aver that every question of law or fact involved in this suit (except only the question of the jurisdiction of this Court) was directly involved in the said proceedings before said Commission, which culminated in said order of April 27th, 1907, and that (with two or three immaterial exceptions) every such question was expressly raised and pressed in the said proceedings by said plaintiff herein, and was considered and decided, expressly or by necessary implication, by the said Commission in the said proceedings; and these defendants aver that there was no evidence, or defence, or

right, or matter, of any kind (whether legal or equitable, whether depending upon questions of law or of fact, or both, and whether arising under the Constitution and laws of the United States or otherwise), which the plaintiff herein could assert or rely upon in its behalf in this suit (if it should be proceeded with as prayed for in the plaintiff's Bill), that the said plaintiff herein did not have both the express and plain legal right to introduce and rely upon, and the fullest and fairest opportunity of introducing and relying upon, in its behalf, throughout said proceedings before said Commission which culminated in said order of April 27th, 1907, of which opportunity the said plaintiff herein most freely availed itself, without limitation or hindrance; and these defendants say, that if this suit could legally proceed, its future proceedings would and could be nothing else than a repetition of exactly the same hearing already had, upon the same evidence already adduced, and upon the same questions already decided, in said proceedings before said Commission culminating in said order of April 27th, 1907; and these defendants further aver, that the Constitution and laws of the State of Virginia make full, ample and liberal provision for an appeal of right by the said plaintiff herein, to the Supreme Court of Ap-
517 peals of Virginia, from the said decision and action of the said State Corporation Commission, and for the suspending of the operation of said order of April 27th, 1907, pending the decision of such an appeal; yet these defendants say, that the said plaintiff herein has not taken, nor applied for, any such appeal, although there is nothing whatever to prevent, hinder, delay, or obstruct its applying for and obtaining such an appeal and in addition thereto, a supersedeas (for which, ample and liberal provision is also made by law) suspending the operation of such order pending the decision of such appeal; and these defendants are advised that, if, upon the decision of any such appeal, the said Railway Company considers that any of the rights secured to it under the Constitution and laws of the United States have been ignored or violated, or that any question, arising under the Constitution and laws of the United States and involved in said proceedings or appeal, has been erroneously decided to its detriment, by the said Supreme Court of Appeals of Virginia upon such appeal, then, and in that event, the Constitution and laws of the United States provide a plain, simple, adequate, perfect and complete remedy for the said plaintiff herein, in the form of an appeal to the Supreme Court of the United States from any such adverse decision by the said Supreme Court of Appeals of Virginia upon such appeal from the said Corporation Commission; therefore, and for these reasons also, these respondents are further advised and respectfully insist that this Honorable Court is without jurisdiction to entertain this suit, or to enter any order or decree, or to take other action herein, except to dismiss the same; and these respondents, therefore, respectfully insist that they ought not to be held or required to further answer the same.

Ninth. That the said proceedings before the State Corporation Commission of Virginia, in which said order of April 27th, 1907, was entered, are not yet completed, but are still pending before that body; and these defendants are advised and respectfully insist that if

said Commission be considered and treated as a court, within
518 the purview of said Section 720 of the Revised Statutes of the United States, then, and in that event, this Court is, as hereinbefore pointed out, without jurisdiction to entertain this suit, or to grant said injunction prayed for in the Bill of the plaintiff herein; and that if, on the other hand, the said Commission be regarded and treated as a legislative body, then, and in that event, this Court is equally without jurisdiction to enjoin the proceeding of such a body in the course of the enactment of a rate regulation, until such enactment is completed; and these defendants aver that, under the Constitution and laws of Virginia, the rate regulation set forth in said order of April 27th, 1907, is not a completed enactment and will not be, unless and until the publication thereof, as directed by said order, is completed, such publication being a part and parcel of the proceedings necessary for the complete enactment of the said rate regulation; therefore, and for these reasons also these defendants are advised and respectfully insist, that this Honorable Court was, and is, without jurisdiction to entertain this suit or to enter any order or decree, or to take any other action herein, except to dismiss the same; and these respondents, therefore, respectfully insist that th-y ought not to be held or required to further answer the same.

Tenth. That the said proceedings before the State Corporation Commission, which culminated in, and included, said order of April 27th, 1907, were and are exactly the same, both as to the tribunal, and as to the methods and forms involved, as are applicable, under the laws of that State, to all cases of a similar character, and were not different in any respect in the case of the plaintiff herein, than they were, are, and would be, under the laws of Virginia, in the case of any and every other railroad company in the State of Virginia whose rates are sought or attempted to be regulated by law; wherefore, these defendants are advised and respectfully insist that neither in the said proceedings, nor in any of them, was the said plaintiff herein denied the equal protection of the laws.

519 *Eleventh.* That, under the Constitution and laws of Virginia, as set forth in the Exhibits filed with this Answer, the plaintiff herein has a plain, complete, prompt and adequate remedy at law for the matters of which it complains in this Bill, in this, that under the said Constitution and laws, the plaintiff herein is given an appeal as of right from the said order of April 27th, 1907, to the Supreme Court of Appeals of Virginia, and is also given the right to have the operation of said order appealed from suspended, pending the decision of said appeal; and, under the Constitution and laws of the United States, the said plaintiff herein is given the further right of an appeal to the Supreme Court of the United States from any adverse decision of the said Supreme Court of Appeals of Virginia in such matters, upon any question arising under the Constitution and laws of the United States. Therefore, and for this reason also, these defendants are advised and respectfully insist, that this Honorable Court was, and is, without jurisdiction to entertain this suit or to enter any order or decree, or to take any action herein, except to dismiss the same; and these respondents, therefore, respectfully insist

that they ought not to be held or required to further answer the same.

Twelfth. That, as will be clearly seen from the constitutional and statutory provisions on the subject hereinbefore set forth and referred to, the State Corporation Commission of Virginia is radically and essentially different, in its character and constitution from the Railroad Commissions (under whatsoever name designated) of any other State in the Union, and from the Interstate Commerce Commission, and therefore the rules and principles of law applicable to injunctions granted by Federal Courts against regulations promulgated by the Railroad Commissions of other States, or to proceedings therein upon regulations prescribed by the Interstate Commerce Commission, can have no proper application to this case. The principal characteristic peculiar to the State Corporation Commission of Virginia is this, that it is, by the Constitution of that State, clothed
520 with all the powers, and endowed with the full nature, of an ordinary judicial court, although it has other powers and functions in addition thereto; it sits in a fixed and public place; it keeps a written public record of its proceedings, which has all the characteristics of a court record; it issues its own writs and processes, and has them served and executed by its own executive process and not otherwise; it can compel the attendance and testifying of witnesses and the production of documents; it can enter no order nor make any valid regulation against a party without first citing it to appear and otherwise proceeding against it by due process of law; it is expressly given all the powers of a court of record; it can impose fines and render, and enforce by execution, judgments therefor which are recordable, and become liens like judgments of other courts; it can issue and enforce writs of mandamus and injunction; it can punish for contempt; it can enforce its own judgments and orders by its own executive process; and not otherwise and none of its judgments or orders can be collaterally attacked in any court of said State; from all of its judgments and orders appeals lie to the Supreme Court of Appeals of the State; but to that Court only; writs of mandamus and prohibition may be issued to it by the Supreme Court of Appeals—in short, there is not an essential characteristic of an ordinary judicial court which the State Corporation Commission of Virginia does not possess. Exactly the same due process of law which would be observed, and the same procedure which would be pursued, in an ordinary judicial court of other States, or of the United States, in a suit by an ordinary Railroad Commission, or by the Interstate Commerce Commission, against a railroad company to compel the observance of an *actually promulgated* rate regulation, just *such* process is observed, and just *such* procedure pursued, by the Virginia State Corporation Commission, *in limine*, with reference to a *suggested* rate regulation, in order that its fairness and reasonableness may be judicially tested, while its wisdom and propriety is being legislatively considered, *before* its promulgation and before any injury can be done or penalty incurred, rather
521 than *afterwards*. In such a proceeding, the company has exactly the same rights and protection, and may assert and rely upon exactly the same matters of law and of fact, and upon each and

every of them, that it could have asserted or relied upon before an ordinary court in a proceeding taken *after* the promulgation of the rate; and from the decision by the Commission of every *judicial* question involved in such proceeding, an appeal of right may be taken (with supersedeas, if desired) by the company affected, to the Supreme Court of Appeals of the State, and thence, upon any Federal question, to the Supreme Court of the United States. Thus it will be seen that, under the Virginia law, all questions involving the legality of a given rate regulation, are to be tried and judicially determined *before* the rate goes into effect, rather than *afterwards*, and are triable, in the first instance, by a tribunal especially suited for considering and adjudging the reasonableness of rates, the members of which tribunal are experts in such matters, rather than by an ordinary judicial tribunal, whose machinery was not designed for such work, and whose judges and masters in chancery rarely, if ever, have occasion to consider such matters. After this *nisi prius* trial, the proceedings in Virginia are the same as elsewhere, that is to say, that the opportunity for appeal from the decision of such *nisi prius* court, upon any judicial question, to the Supreme Court of the State, and thence, upon any Federal question, to the United States Supreme Court, is, in Virginia, the same as, or rather more liberal than, elsewhere. The *nisi prius* proceedings in Virginia are none the less judicial proceedings because they are conducted before a tribunal especially constituted, and peculiarly fitted, for considering and disposing of such matters—its proceedings partaking, in every particular, of all the essential elements of due process of law.

For all of the foregoing reasons, these defendants are advised and again respectfully insist, that this Honorable Court is without jurisdiction to entertain this suit, or to enter any judgment or order, or to take any other proceedings herein except to dismiss the same;
522 wherefore, these defendants respectfully pray that this suit be dismissed, and that they be allowed to go hence without day, and to recover their costs against the plaintiff herein.

BEVERLEY T. CRUMP,
H. C. STUART,
JOS. E. WILLARD,
By Counsel.
R. T. WILSON.

WILLIAM A. ANDERSON,
A. CAPERTON BRAXTON,
p. d.

523 STATE OF VIRGINIA,
City of Richmond, To-wit:

This day Beverley T. Crump, to me personally known, appeared in person before me, the undersigned, a Notary Public in and for the City aforesaid, in the State of Virginia, and, before me, in my said City, subscribed his name to the foregoing answer, and made oath, then and there, that all of the statements of fact contained in said answer are true, of his own knowledge, except as to those matters

therein stated on information and belief, and, as to these matters, he believes them to be true.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, this, the 20th day of June, 1907.

[NOTARIAL SEAL.] JNO. S. EGGLESTON,
Notary Public.

524 DEFENDANTS' EXHIBIT A.

(Section 19 of Chapter II of An Act Concerning Public Service Corporations, Approved January 18th, 1904.)

19. Any person or corporation aggrieved by anything done or omitted in violation of any of the provisions of this act, by any public service corporation chartered or doing business in this State, shall have the right to make complaint of the grievance and seek relief by petition against such public service corporation before the State Corporation Commission, sitting as a court of record. If the grievance complained of be established, the State Corporation Commission, sitting as a court of record, shall have jurisdiction, by injunction, to restrain such public service corporation from continuing the same and to enjoin obedience to the requirements of this act, and the said commission, sitting as a court of record, shall also have jurisdiction, by mandamus, to compel any public service corporation to observe and perform any public duty imposed upon public service corporations by the laws of this Commonwealth, subject as to any matter arising under this section to the right of appeal to the Supreme Court of Appeals by either party as of right in the mode prescribed by law, but nothing in this section shall be construed to confer any power upon the State Corporation Commission which is forbidden to the courts by section twelve of Chapter four of this act.

COMMONWEALTH OF VIRGINIA:

I, D. Q. Eggleston, Secretary of the Commonwealth of Virginia, and Keeper of the Seals thereof, do hereby certify that the foregoing is a true copy of section nineteen of Chapter II. of an act of the General Assembly of Virginia, entitled "An act concerning Public Service Corporations," approved January 18th, 1904, as the same is published according to law; that said section of said act is still in full force and effect, and has been so continuously since the last-mentioned date.

525 Given under my hand and the Lesser Seal of the Commonwealth, at Richmond, this 25th day of June, in the year of our Lord, nineteen hundred and seven.

[Lesser Seal of the Commonwealth.]

D. Q. EGGLESTON,
Secretary of the Commonwealth and Keeper of the Seals.

526 DEFENDANTS' EXHIBIT B.

AN ACT

To require the State Corporation Commission to fix and prescribe storage, demurrage and car service charges which may be collected by railroad and other transportation companies on freight transported, or to be transported by them, and to be paid by them on freight delayed and cars not promptly furnished or placed by them, with rules and regulations governing same.

Approved May 16, 1903.

1. Be it enacted by the general assembly of Virginia, That from and after the passage of this act power is hereby conferred on the State Corporation Commission of the State of Virginia, and it is required to fix and prescribe a schedule of rates for storage of freight in depots and for demurrage or car service on freight in carload lots, to be charged by railroad and other transportation companies doing business in this State, and to fix the time after the reception of freight at destination at which such charges of storage, demurrage, or car service shall begin, with power to vary the same according to the value and character of the freight stored, the nature of the place of destination, the residence of the consignee, and such other facts as, in its judgment, should be considered in fixing the same.

2. That the State Corporation Commission shall fix and prescribe a schedule of detention charges to be paid by railroad and other transportation companies to the consignee in case of delay in the delivery of freight in carloads or less at destination, or where shipments are held an unreasonable length of time at the station or siding at which they originate, or at any intermediate point, and for carrying freights, express packages, and all other effects by and beyond the place of final destination, without authority from the consignee; and the commission shall also fix and prescribe rules and regula-

527 tions covering the placing of empty cars and a schedule of detention charges to be paid by railroad companies to consignors when cars are not placed for loading in accordance with said rules and regulations after application has been made therefor, when said charges shall, when paid, be in full of any and all claims for damages growing out of such failure: provided, however, that the owner of the freight may, at his election, waive said charges and elect to claim such actual damage as he may have sustained instead of such charges.

3. This act shall be in force from its passage.

COMMONWEALTH OF VIRGINIA:

I, D. Q. Eggleston, Secretary of the Commonwealth of Virginia, and Keeper of the Seals thereof, do hereby certify that the foregoing is a true copy of an act of the General Assembly of Virginia, bearing the title set forth in the caption to the foregoing copy,—approved May 16, 1903,—as the same is published according to law; that said

act is still in full force and effect, and has been so continuously since the last-mentioned date.

Given under my hand and the Lesser Seal of the Commonwealth, at Richmond, this 25th day of June, in the year of our Lord, nineteen hundred and seven.

[Lesser Seal of the Commonwealth.]

D. Q. EGGLESTON,
Secretary of the Commonwealth and Keeper of the Seals.

528 DEFENDANTS' EXHIBIT No. 1.

(Sections 155 and 156, Virginia Constitution.)

SEC. 155. A permanent commission, to consist of three members, is hereby created, which shall be known as the State Corporation Commission. The commissioners shall be appointed by the Governor, subject to confirmation by the General Assembly in joint session, and their regular terms of office shall be six years, respectively, except those first appointed under this Constitution, of whom, one shall be appointed to hold office until the first day of February, nineteen hundred and four, one, until the first day of February, nineteen hundred and six, and one, until the first day of February, nineteen hundred and eight. Whenever a vacancy in the commission shall occur, the Governor shall forthwith appoint a qualified person to fill the same for the unexpired term, subject to confirmation by the General Assembly as aforesaid. Commissioners appointed for regular terms shall, at the beginning of the terms for which appointed, and those appointed to fill vacancies shall, immediately upon their appointments, enter upon the duties of their office; but no person so appointed, either for a regular term, or to fill a vacancy, shall enter upon, or continue in, office after the General Assembly shall have refused to confirm his appointment, or adjourned *sine die* without confirming the same, nor shall he be eligible for re-appointment to fill the vacancy caused by such refusal or failure to confirm. No person while employed by, or holding any office in relation to, any transportation or transmission company, or while in any wise financially interested therein, or while engaged in practicing law, shall hold office as a member of said commission, or perform any of the duties thereof. At least one of the commissioners shall have the qualifications prescribed for judges of the Supreme Court of Appeals; and any commissioner may be impeached or removed in the manner provided for the impeachment or removal of a judge of said court.

529 The commission shall annually elect one of their members chairman of the same, and shall have one clerk, one bailiff and such other clerks, officers, assistants and subordinates as may be provided by law, all of whom shall be appointed, and subject to removal, by the commission. It shall prescribe its own rules of order and procedure, except so far as the same are specified in this Constitution or any amendment thereof. The General Assembly may establish within the department, and subject to the supervision and control, of the commission, subordinate divisions, or bureaus, of

insurance, banking or other special branches of the business of that department. All sessions of the commission shall be public, and a permanent record shall be kept of all its judgments, rules, orders, findings and decisions, and of all reports made to, or by, it. Two of the commissioners shall constitute a quorum for the transaction of business, whether there be a vacancy in the commission or not. The commission shall keep its office open for business on every day except Sundays and legal holidays. Transportation companies shall at all times transport, free of charge, within this State, the members of said commission and its officers, or any of them, when engaged on their official duties. The General Assembly shall provide suitable quarters for the commission and funds for its lawful expenses, including pay for witnesses summoned, and costs of executing processes issued, by the commission of its own motion; and shall fix the salaries of the members, clerks, assistants and subordinates of the commission and provide for the payment thereof; but the salary of each commissioner shall not be less than four thousand dollars per annum. After the first day of January, nineteen hundred and eight, the General Assembly may provide for the election of the members of the commission by the qualified voters of the State; in which event, vacancies thereafter occurring shall be filled as hereinbefore provided, until the expiration of twenty days after the next general election, held not less than sixty days after the vacancy occurs, at which election the vacancy shall be filled for the residue of the unexpired term.

SEC. 156. (*a*) Subject to the provisions of this Constitution and to such requirements, rules and regulations as may be pre-
530 scribed by law, the State Corporation Commission shall be the department of government through which shall be issued all charters and amendments or extensions thereof, for domestic corporations, and all licenses to do business in this State to foreign corporations; and through which shall be carried out all the provisions of this Constitution, and of the laws made in pursuance thereof, for the creation, visitation, supervision, regulation and control of corporations chartered by, or doing business in, this State. The commission shall prescribe the forms of all reports which may be required of such corporations by this Constitution or by law; it shall collect, receive, and preserve such reports, and annually tabulate and publish them in statistical form; it shall have all the rights and powers of, and perform all the duties devolving upon, the Railroad Commissioner and the Board of Public Works, at the time this Constitution goes into effect, except so far as they are inconsistent with this Constitution, or may be hereafter abolished or changed by law.

(*b*) The commission shall have the power, and be charged with the duty, of supervising, regulating and controlling all transportation and transmission companies doing business in this State, in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses therein by such companies; and to that end the commission shall, from time to time, prescribe, and enforce against such companies, in the manner hereinafter authorized, such rates, charges, classifications of traffic, and rules and regulations, and shall require them to establish and maintain all such public service, facilities and conveniences, as may be reasonable and just, which said rates, charges, classifications, rules,

regulations and requirements, the commission may, from time to time, alter or amend. All rates, charges, classifications, rules and regulations adopted, or acted upon, by any such company, inconsistent with those prescribed by the commission, within the scope of its authority, shall be unlawful and void. The commission shall also have the right at all times to inspect the books and papers of all transportation and transmission companies doing business in
531 this State, and to require from such companies, from time to time, special reports and statements under oath, concerning their business; it shall keep itself fully informed of the physical condition of all the railroads of the State, as to the manner in which they are operated, with reference to the security and accommodation of the public, and shall, from time to time, make and enforce such requirements, rules and regulations as may be necessary to prevent unjust or unreasonable discriminations by any transportation or transmission company in favor of, or against, any person, locality, community, connecting line, or kind of traffic, in the matter of car service, train or boat schedule, efficiency of transportation or otherwise, in connection with the public duties of such company. Before the commission shall prescribe or fix any rate, charge, or classification of traffic, and before it shall make any order, rule, regulation or requirement directed against any one or more companies by name, the company or companies to be affected by such rate, charge, classification, order, rule, regulation or requirement, shall first be given, by the commission, at least ten days' notice of the time and place, when and where the contemplated action in the premises will be considered and disposed of, and shall be afforded a reasonable opportunity to introduce evidence and to be heard thereon, to the end that justice may be done, and shall have process to enforce the attendance of witnesses; and before the commission shall make or prescribe any general order, rule, regulation or requirement, not directed against any specific company or companies by name, the contemplated general order, rule, regulation or requirement shall first be published in substance, not less than once a week for four consecutive weeks in one or more of the newspapers of general circulation published in the city of Richmond, Virginia, together with notice of the time and place when and where the commission will hear any objections which may be urged by any person interested, against the proposed order, rule, regulation or requirement; and every such general order, rule, regulation or requirement, made by the commission shall be published at length, for the time and
532 in the manner above specified, before it shall go into effect, and shall also, as long as it remains in force, be published in each subsequent annual report of the commission. The authority of the commission (subject to review on appeal as hereinafter provided) to prescribe rates, charges and classifications of traffic, for transportation and transmission companies, shall be paramount; but its authority to prescribe any other rules, regulations or requirements for corporations or other persons shall be subject to the superior authority of the General Assembly to legislate thereon by general laws: provided, however, that nothing in this section shall impair the right which has heretofore been, or may hereafter be, conferred by law

upon the authorities of any city, town or county to prescribe rules, regulations or rates of charge to be observed by any public service corporation in connection with any services performed by it under a municipal or county franchise granted by such city, town or county, so far as such services may be wholly within the limits of the city, town or county granting the franchise. Upon the request of the parties interested, it shall be the duty of the commission, as far as possible, to effect, by mediation, the adjustment of claims, and the settlement of controversies, between transportation or transmission companies and their patrons.

(*c*) In all matters pertaining to the public visitation, regulation or control of corporations, and within the jurisdiction of the commission, it shall have the powers and authority of a court of record, to administer oaths, to compel the attendance of witnesses and the production of papers, to punish for contempt any person guilty of disrespectful or disorderly conduct in the presence of the commission while in session, and to enforce compliance with any of its lawful orders or requirements by adjudging, and enforcing by its own appropriate process, against the delinquent or offending company (after it shall have been first duly cited, proceeded against by due process of law before the commission sitting as a court, and afforded opportunity to introduce evidence and to be heard, as well against the validity, justness or reasonableness of the order or re-
533 quirement alleged to have been violated, as against the liability of the company for the alleged violation), such fines or other penalties as may be prescribed or authorized by this Constitution or by law. The commission may be vested with such additional powers, and charged with such other duties (not inconsistent with this Constitution) as may be prescribed by law, in connection with the visitation, regulation or control of corporations, or with the prescribing and enforcing of rates and charges to be observed in the conduct of any business where the State has the right to prescribe the rates and charges in connection therewith, or with the assessment of the property of corporations, or the appraisement of their franchises, for taxation, or with the investigation of the subject of taxation generally. Any corporation failing or refusing to obey any valid order or requirement of the commission, within such reasonable time, not less than ten days, as shall be fixed in the order, may be fined by the commission (proceeding by due process of law *as aforesaid*) such sum, not exceeding five hundred dollars, as the commission may deem proper, or such sum, in excess of five hundred dollars, as may be prescribed, or authorized, by law; and each day's continuance of such failure or refusal, after due service upon such corporation of the order or requirement of the commission, shall be a separate offence: provided, that should the operation of such order or requirement be suspended pending an appeal therefrom, the period of such suspension shall not be computed against the company in the matter of its liabilities to fines or penalties.

(*d*) From any action of the commission prescribing rates, charges *or* classifications of traffic, or affecting the train schedule of any transportation company, or requiring additional facilities, conveniences or public service of any transportation or transmission

company, or refusing to approve a suspending bond, or requiring additional security thereon or an increase thereof, as provided for in subsection (*e*) of this section, an appeal (subject to such reasonable limitations as to time, regulations as to procedure and provisions as to costs, as may be prescribed by law) may be taken by the corporation whose rates, charges or classifications of traffic, sched-
534 ule, facilities, conveniences or service, are affected, or by any person deeming himself aggrieved by such action or (if allowed by law) by the Commonwealth. Until otherwise provided by law, such appeal shall be taken in the manner in which appeals may be taken to the Supreme Court of Appeals from the inferior courts, except that such an appeal shall be of right, and the Supreme Court of Appeals may provide by rule for proceedings in the matter of appeals in any particular in which the existing rules of law are inapplicable. If such appeal be taken by the corporation whose rates, charges or classifications of traffic, schedules, facilities, conveniences or service are affected, the Commonwealth shall be made the appellee; but, in the other cases mentioned, the corporation so affected shall be made the appellee. The General Assembly may also, by general laws, provide for appeals from any other action of the commission, by the Commonwealth or by any person interested, irrespective of the amount involved. All appeals from the commission shall be to the Supreme Court of Appeals only; and in all appeals to which the Commonwealth is a party, it shall be represented by the Attorney-General or his legally appointed representative. No court of this Commonwealth (except the Supreme Court of Appeals, by way of appeals as herein authorized), shall have jurisdiction to review, reverse, correct or annul any action of the commission, within the scope of its authority, or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the commission in the performance of its official duties; provided, however, that the writs of *mandamus* and prohibition shall lie from the Supreme Court of Appeals to the commission in all cases where such writs, respectively, would lie to any inferior tribunal or officer.

(*e*) Upon the granting of an appeal, a writ of *supersedeas* may be awarded by the appellate court, suspending the operation of the action appealed from until the final disposition of the appeal; but, prior to the final reversal thereof by the appellate court, no action of the commission prescribing or affecting rates, charges or classifications of traffic of any transportation or transmission com-
535 pany shall be delayed, or suspended, in its operation, by reason of any appeal by such corporation, or by reason of any proceedings resulting from such appeal, until a suspending bond shall first have been executed and filed with, and approved by, the commission (or approved on review by the Supreme Court of Appeals), payable to the Commonwealth, and sufficient in amount and security to insure the prompt refunding, by the appealing corporation to the parties entitled thereto, of all charges which such company may collect or receive, pending the appeal, in excess of those fixed, or authorized, by the final decision of the court on appeal.

The commission, upon the execution of such bond, shall forthwith require the appealing company, under penalty of the immediate enforcement (pending the appeal and notwithstanding any *supersedeas*), of the order or requirement appealed from, to keep such accounts, and to make to the commission, from time to time, such reports, verified by oath, as may, in the judgment of the commission, suffice to show the amounts being charged or received by the company, pending the appeal, in excess of the charge allowed by the action of the commission appealed from, together with the names and addresses of the persons to whom such overcharges will be refundable in case the charges made by the company pending the appeal be not sustained on such appeal; and the commission shall also, from time to time, require such company, under like penalty, to give additional security on, or to increase, the said suspending bond, whenever, in the opinion of the commission, the same may be necessary to insure the prompt refunding of the overcharges aforesaid. Upon the final decision of such appeal, all amounts which the appealing company may have collected, pending the appeal, in excess of that authorized by such final decision, shall be promptly refunded by the company to the parties entitled thereto, in such manner, and through such methods of distribution, as may be prescribed by the commission, or by law. All such appeals affecting rates, charges of classifications of traffic, shall have precedence upon the docket of the appellate court, and shall be heard and disposed of promptly by the court, irrespective of its place of session,
536 next after the *habeas corpus*, and Commonwealth's, cases already on the docket of the court.

(*f*) In no case of appeal from the commission shall any new or additional evidence be introduced in the appellate court; but the chairman of the commission, under the seal of the commission, shall certify to the appellate court all the facts upon which the action appealed from was based and which may be essential for the proper decision of the appeal, together with such of the evidence introduced before, or considered by, the commission as may be selected, specified and required to be certified, by any party in interest, as well as such other evidence, so introduced or considered, as the commission may deem proper to certify. The commission shall, whenever an appeal is taken therefrom, file with the record of the case, and as a part thereof, a written statement of the reasons upon which the action appealed from was based, and such statement shall be read and considered by the appellate court, upon disposing of the appeal. The appellate court shall have jurisdiction, on such appeal, to consider and determine the reasonableness and justness of the action of the commission appealed from as well as any other matter arising under such appeal: provided, however, that the action of the commission appealed from shall be regarded as *prima facie* just, reasonable and correct; but the court may, when it deems necessary, in the interest of justice, remand to the commission any case pending on appeal, and require the same to be further investigated by the commission, and reported upon to the court (together with a certificate of such additional evidence as may be tendered before the

commission by any party in interest), before the appeal is finally decided.

(*g*) Whenever the court, upon appeal, shall reverse an order of the commission affecting the rates, charges or the classification of traffic of any transportation or transmission company, it shall, at the same time, substitute therefor such order as, in its opinion, the commission should have made at the time of entering the order appealed from; otherwise, the reversal order shall not be valid.

537 Such substituted order shall have the same force and effect (and none other) as if it had been entered by the commission at the time the original order appealed from was entered. The right of the commission to prescribe and enforce rates, charges, classifications, rules and regulations, affecting any or all actions of the commission theretofore entered by it and appealed from, but based upon circumstances or conditions different from those existing at the time the order appealed from was made, shall not be suspended or impaired by reason of the pendency of such appeal; but no order of the commission, prescribing or altering such rates, charges, classifications, rules or regulations, shall be retroactive.

(*h*) The right of any person to institute and prosecute in the ordinary courts of justice, any action, suit or motion against any transportation or transmission company, for a claim or cause of action against such company, shall not be extinguished or impaired, by reason of any fine or other penalty which the commission may impose, or be authorized to impose, upon such company because of its breach of any public duty, or because of its failure to comply with any order or requirement of the commission; but, in no such proceeding by any person against such corporation, nor in any collateral proceeding, shall the reasonableness, justness or validity of any rate, charge, classification of traffic, rule, regulation or requirement, theretofore prescribed by the commission, within the scope of its authority, and then in force, be questioned: provided, however, that no case based upon or involving any order of the commission shall be heard, or disposed of, against the objection of either party, so long as such order is suspended in its operation by an order of the Supreme Court of Appeals as authorized by this Constitution or by any law passed in pursuance thereof.

(*i*) The commission shall make annual reports to the Governor of its proceedings, in which reports it shall recommend, from time to time, such new or additional legislation in reference to its powers or duties, or to the creation, supervision, regulation or control

538 of corporations, or to the subject of taxation, as it may deem wise or expedient, or as may be required by law.

(*k*) Upon the organization of the State Corporation Commission, the Board of Public Works and the office of Railroad Commissioner, shall cease to exist; and all books, papers and documents pertaining thereto, shall be transferred to, and become a part of the records of, the office of the State Corporation Commission.

(*l*) After the first day of January, nineteen hundred and five, in addition to the modes of amendment provided for in Article Fifteen of this Constitution, the General Assembly, upon the recom-

mendation of the State Corporation Commission, may, by law, from time to time, amend subsections *a* to *i*, inclusive, of this section, or any of them, or any such amendment thereof: provided, that no amendment made under authority of this sub-section shall contravene the provisions of any part of this Constitution other than the sub-sections last above referred to or any such amendment thereof.

COMMONWEALTH OF VIRGINIA:

I, D. Q. Eggleston, Secretary of the Commonwealth of Virginia and Keeper of the Seals thereof, do hereby certify that the foregoing is a true copy of sections one hundred and fifty-five and one hundred and fifty-six of the Constitution of Virginia, the original of which, by law, is in my custody; that said two sections are still in full force and effect, and have been so continuously since prior to January 1st, 1904.

Given under my hand and the Lesser Seal of the Commonwealth, at Richmond, this 25th day of June, in the year of our Lord, nineteen hundred and seven.

[Lesser Seal of the Commonwealth.]

D. Q. EGGLESTON,
Secretary of the Commonwealth and Keeper of the Seals.

539 DEFENDANTS' EXHIBIT NO. 2.

AN ACT

To put into effective operation the provisions of the constitution relating to the creation, appointment and organization of the "State Corporation Commission," its jurisdiction, powers, functions, and duties; the qualifications of the members and officers thereof, their appointment and salaries; the location of its offices, and places and times of its public sessions; its writs, processes, orders, findings and judgments; appeals from its orders, findings and judgments, and its expenses, etc.

Approved April 15, 1903.

Be it enacted by the General Assembly of Virginia as follows:

1. That as used in this act the term "corporation" or "company" shall include all corporations chartered by the acts of the General Assembly of Virginia, or under the general incorporation laws of this State, or doing business therein, and all trusts, associations, and joint-stock companies, having any powers or privileges not possessed by individuals or unlimited partnerships, and shall exclude all municipal corporations and public institutions owned or controlled by the State; the term "charter" shall be construed to mean a charter of incorporation by or under which any such corporation is formed; the term "transportation company" shall include any company, trustee, or other person owning, leasing, or operating for hire, a rail-

road, street railway, canal, steamboat, or steamship lines, also any freight-car company, car association or car trust, express company, or company, trustee, or person in any way engaged in business as a common carrier over a route acquired, in whole or in part, under the right of eminent domain; the term "transmission company" shall include any company owning, leasing, or operating for hire, any telegraph or telephone line; the term "public service cor-
540 poration" shall include all transportation and transmission companies, all gas, electric light, heat, and power companies, and all persons authorized to exercise the right of eminent domain, or to use or occupy any street, alley, or public highway, whether along, over, or under the same, in a manner not permitted to the general public; the term "person" as used in this act shall include individuals, partnerships, and corporations, in the singular as well as in the plural number; the term "the commission" shall be construed to mean the "State Corporation Commission," and the word "officers," when used in connection with said commission, shall be construed to mean any clerk, bailiff, assistant, or other appointee of the State Corporation Commission.

Appointment of Members of Corporation Commission; Terms; Commission.

2. That the governor shall, at least fifteen days before the first day of February, nineteen hundred and four, and at least fifteen days before the first day of February in each alternate year thereafter, appoint, subject to the confirmation of the General Assembly, in joint session, a citizen of this State, possessing the qualifications prescribed by the Constitution and by law to be a member of the "State Corporation Commission" (which shall be composed of three members), and whose term of office shall be that prescribed by the Constitution, and shall begin on the first day of February next succeeding his appointment and confirmation, except in the case of an appointee to fill a vacancy, or where the General Assembly fails to confirm an appointee to a full term of office before the date fixed by law for the commencement of his said term of office; in either case the term of office of any such appointee shall begin from the date of his qualification, and shall be for the unexpired portion of the term of office to which he shall be so appointed and confirmed. The members of the commission first appointed and confirmed, and those hereafter appointed and confirmed, shall hold office for the
541 respective terms for which they have been, or may hereafter be, appointed, and until their respective successors in office have been appointed, confirmed, and qualified, unless they shall sooner be removed from office as prescribed by the Constitution or by law. The governor shall commission each of the members of the commission, and said commission shall be filed by the members in the office of the clerk of the commission.

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Who Eligible to Serve as a Member of the Commission; Qualifications, etc.

3. That no person shall be eligible to serve as a member of the State Corporation Commission who, on the date of the commencement of his term of office, shall be employed by or hold any office in relation to any transportation or transmission company, or is in any way financially interested therein, or is engaged in the practice of law; nor shall any person be eligible to appointment as a member of the commission unless at the time of his appointment he is a qualified voter under the Constitution and laws of this State. One of the commissioners shall have the qualifications prescribed for judges of the supreme court of appeals.

Oath of Office.

4. That the members of the commission and the officers thereof, for whose appointment provision is made either by the Constitution or by law, before entering upon the discharge of the duties of their respective offices, shall, in addition to the oath prescribed by section thirty-four of the Constitution, severally take and subscribe the following oath, to-wit:

"I, —— ——, do solemnly swear (or affirm) that at the present time I am not employed by, and do not hold any office in relation to, any transportation or transmission company, and have not in any wise any financial interest in any such company, and am not engaged in the practice of law, and that during the term of my office as — I will not either, directly or indirectly, be employed by
542 or hold any office in relation to any transportation or transmission company, or in any wise be financially interested in any such company, or be engaged in the practice of law, so help me God."

But the said additional oath shall be taken and subscribed by the first members of the commission and by the officers thereof as soon as practicable after the passage of this act.

The oaths prescribed by the Constitution and this act may be taken and subscribed before any officer authorized by the laws of this State to administer oaths, and shall be certified by such officer and recorded on the minutes of the proceedings of the commission, and then returned by its clerk as required by law as to the oaths of other State officers.

Offices of Commission to be Located in the City of Richmond; Where Notice, Writ or Process to be Returnable; When Public Sessions May be Held Elsewhere.

5. That the offices of the commission shall be located, and its public sessions, held, in the city of Richmond, and all notices, writs, and processes issued by the commission shall be made returnable to, and command the corporation or person against whom directed to appear before the commission and answer on a certain day to be named therein: provided, however, the commission may in its discretion, if public necessity or the convenience of the parties require,

hold public sessions elsewhere in the State, and may order any notice, writ, or process to be made returnable to the place of any such session; and for the holding of any such session the commission may occupy the court-room of the court-house of the city or county wherein such session may be held if said court-room shall not at the time be in use for the sessions of the court of any such city or county.

Offices.

6. That the rooms in the State library building now occupied as offices by the railroad commissioner shall be the offices of the
543 commission, its clerk, bailiff, assistants, and subordinates until otherwise provided by law, and the register of the land office is hereby directed to have the said rooms fitted up in a suitable manner for the use and occupation of the commission and its officers. And the sum of five hundred dollars, or so much thereof as may be necessary, is hereby appropriated for that purpose out of any moneys in the treasury not otherwise appropriated.

Clerk, Assistant Clerk, Bailiff, Stenographer, &c., Qualifications and Terms.

7. That the commission shall have a clerk, a first assistant clerk, a bailiff, and a stenographer (who shall also be a typewriter), each of whom shall have the qualifications for office, be clothed with the power, discharge the functions and perform all the duties hereinafter prescribed, and such other duties as may be prescribed or required by the commission, and all of whom shall be appointed by the commission, and whose respective terms of office shall be as prescribed by the commission, and they shall be subject to removal by the commission as hereinafter in this act provided. The officers so appointed shall hold office until their successors have been appointed, qualified, and given bond as required by law, unless they shall sooner be removed from office, as hereinafter provided.

Officers to be Residents of the State and Qualified Voters.

8. That the officers of the commission shall at the time of their appointment be actual residents of this State, and qualified voters therein, under the Constitution and laws thereof.

The First Members of the Commission to Meet, Organize, Appoint Clerical Force, &c.; When the Commission to be Vested With Powers and Function of Office.

9. That the persons appointed, confirmed, and commissioned to be the first members of the commission under the provisions of
544 section one hundred and fifty-five of the Constitution shall, as soon as practicable, meet in the office now used by the railroad commissioner and organize by taking and subscribing the oaths of office prescribed by the Constitution and by this act, and elect one of their number as chairman of the commission, appoint a clerk, a first assistant clerk, a bailiff, and a stenographer; and when or-

ganized the commission shall have all the powers, discharge all the functions, and perform all the duties prescribed by the Constitution and by law.

When the Office to Become Vacant; How Vacancies Filled.

10. That if any person heretofore or hereafter appointed and confirmed to be a member of the commission, or if any person appointed an officer of the commission, shall fail to qualify as required by the Constitution or by law, or to give any bond required by law of any such officer within thirty days after the date fixed by the Constitution or by law, as the commencement of the term of office to which he shall be appointed, then such office shall because of such failure to qualify, or to give any required bond within the time aforesaid, become vacant, and such vacancy shall, in the case of members of the commission, be filled as prescribed by section one hundred and fifty-five of the Constitution, and in the case of officers and appointees of the commission, be filled by appointment of the commission.

Duties of Clerk; Records; Certified Copies Same Legal Effect.

11. That the clerk of the commission shall keep a minute book in which shall be recorded all the proceedings, orders, findings, and judgments of the public sessions of the commission, and the minutes of the proceedings of each day's public session shall be read and approved by the commission and signed by its chairman, or acting chairman; he shall, subject to the supervision and control of the commission, have custody of and preserve all of the records, documents, papers, and files of the commission, or which may be filed before it in any complaint, proceeding, contest or controversy,
545 and said records, documents, papers, and files shall be open to public examination in the office of said clerk to the same extent as the records and files of the courts of this Commonwealth; he shall, when requested, make and certify copies from any record, document, paper, or file in his office, and if required, affix the seal of the commission thereto, and except when made at the instance of the commission or on behalf of the Commonwealth, he shall charge and collect the same fees as are fixed by law for like services rendered by the clerks of the courts of this Commonwealth, and any such copy, so certified, shall have the same faith, credit, and legal effect as copies made and certified by the clerks of the courts of this Commonwealth from the records and files thereof; he shall certify all allowances made by the commission to be paid out of the public treasury for witness fees, service of process, or other expenses; issue all notices, writs, processes or orders awarded by the commission; or authorized by law, or by the rules of the commission; he shall receive all fines and penalties imposed by the commission, all moneys collected on judgments, all registration fees required by law to be paid by corporations, all fees collected by any officer of the commission, and the tax on the seal of the commission, and shall keep an accurate account of the same and what disposition has been made thereof, together with all fees collected by him for services rendered,

either by him or his assistants, and shall, at least once in every thirty days during his term of office, render a statement of all such receipts and collections to the auditor of public accounts, and pay the same into the treasury of the Commonwealth, and shall keep all such other accounts of such collections and disbursements, and shall make all such other reports thereof as may be required by law or by the regulations prescribed by the auditor of public accounts; and generally shall have the powers, discharge the functions, and perform the duties of a clerk of a court of record in all matters within the jurisdiction of the commission.

546 Duties and Powers of First Assistant Clerk.

12. That the first assistant clerk of the commission shall have the powers, discharge the functions, and perform the duties in all matters within the jurisdiction of the commission of a deputy clerk of a court of record, and shall perform as well the duties of the clerk of the commission during the absence of said clerk, and in case of the death, resignation, incapacity, or removal from office of the clerk, he shall be the acting clerk of the commission until the vacancy in the office of clerk shall be filled.

Duties and Powers of the Bailiff.

13. That the bailiff of the commission shall, in all matters within the jurisdiction of the commission, have the powers, discharge the functions, and perform the duties of a sheriff or sergeant under the law; he shall preserve order during the public sessions of the commission, and may make arrests and serve and make return on any writ or process awarded by the commission, and execute any writ, order, or process of execution awarded upon the findings or judgments of the commission in any matter within its jurisdiction.

Duties of the Stenographer, &c.

14. The stenographer and other assistants and subordinates of the commission shall perform the duties required of them by law or by the commission, under its rules, regulations, and requirements.

The Commission to Require Its Officers to Enter into Bond; Amount, Conditions, and Recordation of Same.

15. The commission shall require its clerk, first assistant clerk, and bailiff, before entering upon the discharge of the duties of their respective offices, each to enter into bond, with surety to be approved by the commission, in such penalty as the commission
547 may deem sufficient (not in any case less than five thousand dollars), conditioned for the faithful performance of the duties of their respective offices, and for the prompt and full accounting for and payment into the treasury of all moneys received by them, respectively, as officers of the commission. The said bonds shall be made payable to the Commonwealth, and may be proceeded on and enforced in any circuit or corporation court in like manner

as the official bonds of other officers of this Commonwealth, or of its courts. Said bonds shall be recorded in the record of the proceedings of the commission, and the original bonds transmitted by its clerk to the auditor of public accounts, who shall file and preserve the same in his office.

Powers of the Commission.

16. The commission shall have power and authority to require, by its rules, regulations, and requirements, all corporations chartered under the laws of this State, and all foreign corporations, doing business in this State, to perform and discharge any public duty or requirement imposed upon such corporations by the Constitution, or by law, and may require all such corporations to furnish such reports to the commission as may be provided by the Constitution, or by law, and the commission may enforce against any such corporation, by its judgments and processes, any fine or other penalty imposed by law for the failure of any such corporation to perform any public duty required of it, or to comply with any requirement of law, or any lawful regulation of the commission in reference to the same. The commission may require the establishment by transportation companies of separate waiting rooms at all stations, wharves, or landings for the white and colored races.

548 Duties of the Commission with Respect to Transportation Companies, &c.

17. It shall be the duty of the commission to make inquiry and examination from time to time into the acts and proceedings of railroad, canal, steamboat, steamship, or other transportation companies, and other chartered common carriers and transmission companies, doing business in this State, their officers and agents, for the purpose of ascertaining whether anything has been done or omitted in violation or contravention of their charters, or of the law.

The Commission to Examine all Railroads, &c.

18. The commission shall examine all the railroads and the works and equipment thereof, and the works and equipment of all other transportation companies, and keep itself informed as to their physical condition and the manner in which they are operating with reference to the security and accommodation of the public, and the compliance of the several companies with the provisions of their charters and the laws of the Commonwealth. And the provisions of this section shall apply to all railroads and other transportation companies, and to the corporations, trustees, receivers, or other person owning or operating the same.

The Commission to give Notice to Transportation or Transmission Company of Violation of Law, and Compel Compliance with Same.

19. Whenever, in the judgment of the commission, it shall appear that any transportation or transmission company has violated any

law of this State, or has neglected in any respect or particular to comply with the terms of its charter, or with the provision of any of the laws of the Commonwealth, it shall give notice thereof in writing to such company or the person operating the same; and if the violation or neglect be continued after such notice, the commis-
549 sion shall take such proceedings and impose such fines or penalties within its jurisdiction as shall be necessary to compel such transportation or transmission company to comply with the terms of its charter and the provisions of the laws of the Commonwealth.

The Commission to Compel Railroad to Make Repairs When Necessary; Notice; Railroad May be Heard Thereon; Penalty.

20. Whenever in the judgment of the commission it shall appear that repairs are necessary upon any railroad, or that any addition to its rolling stock, or addition or improvement in the equipment of any other transportation line, or any enlargement of or improvement in the stations or station houses, waiting rooms, wharves or landings, or any change in the mode of operating the road, or other transportation line, and conducting its business, is reasonable and expedient in order to promote the security and accommodation of the public, it shall give ten days' notice in writing to the company or person operating the road, or other transportation line, of the improvements and changes which it adjudges to be proper, designating when and where the contemplated action in the premises will be considered and disposed of, and such company or person shall be afforded a reasonable opportunity to introduce witnesses and to be heard thereon, and any such company or person failing or refusing to obey any valid order or requirement of the commission in the premises within such reasonable time, not less than ten days, as shall be fixed in the order of the commission, it may impose upon any such company or person the fines and penalties prescribed by the Constitution and by law for its or his failure to obey the orders and requirements of the commission and the requirements of the law, and enforce the payment and collection thereof by its judgments and processes.

When Commission to Make an Examination of Road; Notice; Fines; How Same May be Enforced.

21. Upon the complaint and application of the mayor or
550 counsel of any city or town, or the board of supervisors of any county within which any part of any transportation or transmission line is located, it shall be the duty of the commission to make an examination of the physical condition and operation thereof. Before proceeding to make such examination in accordance with such application, the commission shall give to the applicants and the corporation or person operating any such line reasonable notice in writing, of the time and place of entering upon the same. If upon such examination it shall appear to the commission that the complaint alleged by the applicant is well founded, it shall so ad-

judge and shall notify such corporation or person of its adjudication; and if such corporation or person fail for sixty days after such notification to remove the cause of complaint, the commission shall impose the fines and penalties provided by the Constitution and by law for its failure to obey the orders and requirements of the commission, and enforce the collection thereof by its judgments and processes.

Commonwealth to be Complainant, &c.

22. That in all complaints, proceedings, contests, or controversies by or before the commission, whether instituted by the Commonwealth or by the commission of its own motion, the Commonwealth shall be complainant, and the party against whom the complaint is preferred, or the proceeding instituted, shall be the defendant. Any party complainant or defendant in any complaint, proceeding, contest or controversy shall be entitled to process, to convene parties, compel the attendance of witnesses, or the production of books and papers, in any proceeding or hearing before the commission.

Proceedings to be as in Courts of Record.

23. That the commission, on hearing of all complaints, proceedings, contests, or controversies, in which it shall be called upon to decide or render judgment in its capacity as a court of record,
551 shall observe and administer the common and statute law rules of evidence as observed and administered by the courts of this Commonwealth, in like manner as complainants and defendants in the courts of this Commonwealth.

Perjury.

24. That any person who shall wilfully swear falsely touching any material fact or matter in any complaint, proceeding, investigation, contest or controversy instituted or pending before the commission shall be deemed guilty of perjury.

The Commission to Cause its Rules of Procedure, &c., to be Entered of Record and Printed; Distribution of Copies.

25. That the commission shall cause its rules of order and procedure to be entered upon the records of its proceedings and to be printed, as well as all amendments and additions to the same, and shall furnish copies thereof to county and city clerks and to any citizen of this State upon application therefor.

The Commission to Summon Party Before Imposing Fine or Penalty; Contempts; Notice to be Given as to Rules or Orders Directed Against One or More Companies; General Order, Rule, &c., to be Published; Suspension of Order During Appeal; Penalties.

26. That the commission, before entering any judgment for any fine or penalty imposed by law shall summon or rule the party upon whom such fine or penalty is sought to be imposed to appear before

the commission at some public session to be designated in the process, to show cause against such fine or penalty, and why the same should not be imposed and judgment rendered therefor: provided, that the provisions of this section shall not apply to contempts com-
552 mitted in the presence of the commission while in public session; and before the commission shall make any order, rule, regulation, or requirement directed against any one or more companies by name, the company or companies to be affected by such order, rule, regulation, or requirement shall first be given by the commission at least ten days' notice of the time and place when and where the contemplated action of the commission in the premises will be considered and disposed of, and shall be afforded a reasonable opportunity to introduce evidence and to be heard thereon, to the end that justice may be done; and before the commission shall make or prescribe any general order, rule, regulation, or requirement, not directed against any specific company or companies by name, the contemplated general order, rule, regulation, or requirement shall first be published in substance, not less than once a week for four consecutive weeks, in one or more newspapers of general circulation published in the city of Richmond, Virginia, together with notice of the time and place when and where the commission will hear any objections which may be urged by any person interested, against the proposed order, rule, regulation, or requirement; and every such general order, rule, regulation, or requirement made by the commission shall be published at length for the time and in the manner above specified before it shall go into effect, and shall also, as long as it remains in effect, be published in each subsequent report of the commission. Any corporation failing or refusing to obey any valid order or requirement of the commission within such reasonable time, not less than ten days, as shall be fixed in the order, may be fined by the commission such sum, not exceeding five hundred dollars, as the commission may deem proper, or in such sum in excess of five hundred dollars as may be prescribed or authorized by law; and each day's continuance of such failure or refusal after due service upon such corporation of the order or requirement of the commission shall be a separate offense: provided, that should the operation of such order or requirement be suspended pending an appeal therefrom, the period of such suspension shall not be computed
553 against the company in the matter of its liability to fines or penalties; provided, further, that the power of the commission to impose the penalties prescribed by the Constitution, or by the law, for the failure or refusal of any corporation to obey its valid orders and requirements, shall not be construed to relieve any company or corporation from the penalties now prescribed or hereafter to be prescribed by law for the failure or refusal of any such company or corporation to perform any public duty or requirement prescribed, or which may be prescribed by any law of this State, but that such penalties may be enforced by the commission in addition to the penalties authorized to be imposed by the Constitution and by law for failure or refusal to obey any of its valid orders or requirements.

Powers of the Commission with Respect to Rendering and Enforcing Judgments, Penalties, &c., Collection and Payment of Same into the Treasury.

27. The commission shall have power and authority in all matters of which it has jurisdiction under the Constitution, or the laws of this Commonwealth, to render and enter up judgment for fines and penalties, or for the recovery of money, in any complaint, proceeding, contest, or controversy, whether instituted of its own motion or otherwise, and to issue process of execution thereon, which may be levied and executed in like manner as executions awarded and issued upon the judgments or decrees of the courts of law or equity of this Commonwealth. All judgments of the commission for fines or penalties, for contempt, or for the violation of any provision of the Constitution, or the laws of this State, or for the failure or refusal of any corporation to obey and observe the lawful rules, regulations, or orders of the commission, shall be entered up in favor of the Commonwealth, and when collected shall be paid by the clerk of the commission into the treasury, as hereinbefore provided.

554 The Commission to Have Power to Punish for Contempt by Fine or Imprisonment, &c., to the Same Extent and Manner as Courts; Commitment to Jail, &c.; Writ of Error.

28. The commission shall have powers and jurisdiction possessed and exercised under the law by the courts of record of this Commonwealth to punish for contempt by fine or imprisonment, or by both, any person duly summoned to appear and testify before the commission who shall fail or refuse to appear and testify, without a lawful excuse, or who shall refuse to answer any proper question propounded to him by the commission in the discharge of its duty or who shall conduct himself in a rude, disrespectful, or disorderly manner before the commission, or any of them, deliberating in the discharge of duty in public session, and may, for any such contempt, impose the same penalties, either by fine or imprisonment, or by both, and render and enter up judgment in any such proceeding and enforce the same by process of execution or by commitment to jail, or by both, in the same manner and by like process and proceedings, and to the same extent, as may by law be done by any of the courts of this Commonwealth. The commission may commit any person adjudged by it guilty of contempt to the jail of any city or county in the Commonwealth, and the jailer thereof shall receive such person upon the commitment of the commission, attested by its clerk, first assistant clerk, or acting clerk, and confine such person in the jail of his city or county, as the case may be, for the term of imprisonment specified in the commitment, unless sooner discharged therefrom by due process of law. The said jailer shall receive for the board of any person so committed the same allowance made by law for other persons confined in such jail, which shall be paid out of the public treasury upon the allowance of the commission, certified as hereinbefore provided. The fines and judgments of the commission in any contempt proceeding may be reviewed, affirmed, reversed, or modified, as justice may require, on writ of error from the commission to the supreme court of appeals.

555 The Commission May Award and Issue, Serve, Execute, and Return Process, &c., and Compel Attendance of Witnesses, as Courts.

29. That the commission shall, in all matters within its jurisdiction, have the power and authority to award and issue, have served, executed, and returned, any writ, notice, process, order, or order of publication which may by law be awarded, issued, served, executed, or returned by or to any court of law or equity in this Commonwealth, for the purpose of compelling the attendance of witnesses, the production of books and papers, the convening of parties, or the enforcement and execution of its findings, orders, or judgments.

Writs, &c., to Run in the Name of the Commonwealth; by Whom Issued and Served; Fees; Duties of Bailiff; Penalty for Failure to Execute Writ, &c.

30. That all writs, processes, and orders of the commission shall run in the name of the Commonwealth, and shall be attested by its clerk, or first assistant clerk, or acting clerk, and shall be directed to its bailiff, and may be served, executed, and returned by the said bailiff, in any city or county of the State, or by the sergeant or sheriff, or any constable, of any city or county in this State within his bailiwick. All writs, notices, processes, or orders of the commission may be served, executed, and returned in like manner and upon like persons or property as the processes, writs, notices, or orders of the courts of record of this Commonwealth, and when so served, executed, and returned shall have the same legal effect. The bailiff or other officer serving or executing any writ, notice, process, or order of the commission shall receive the same fees and commissions allowed by law for like services to the sergeants and sheriffs of the cities and counties of this State: provided, that the bailiff of the commission shall account for and pay to its clerk all fees and commissions received by him for any services which he may render, which
556 shall be accounted for and paid by the clerk of the commission into the treasury, as hereinbefore provided. The bailiff, or any other officer hereinbefore named, who shall fail to execute and return any writ, notice, process, or order of the commission shall be subject to the penalties prescribed by law for the failure to execute and return the process of any court, which penalties may be enforced by the judgment of the commission.

The Commission to Tax and Collect Like Fees and Costs as Courts; Fees and Mileage of Witnesses.

31. That the commission shall cause to be taxed and collected in all complaints, proceedings, contests, or controversies instituted or pending before it, like fees and costs taxed and collected for like services by the officers of the courts of this Commonwealth; also, the fees and mileage of witnesses attending upon its public sessions, and may enter judgment for the same and issue execution thereon, which execution may be levied and executed in like manner as execution issued upon the judgments or decrees of the courts of law or equity of this Commonwealth: provided, that no costs shall be taxed or col-

lected against the Commonwealth except on appeals of corporations under the provisions of section one hundred and eighty of the Constitution, which have been aggrieved by the assessments and ascertainments made by the commission under sections one hundred and seventy-six and one hundred and seventy-eight of the Constitution.

Judgments of the Commission to be a Lien on Real Estate When Duly Docketed, &c.; How Enforced; Clerks to Docket Judgments Certified by the Clerk of the Commission.

32. That the judgments of the commission for the recovery of money, fines, or penalties shall be a lien on the real estate of the judgment debtor when duly docketed and indexed in the judgment lien docket as the judgments of the courts of record are required by law to be docketed and indexed, in the county or city in which
557 the real estate of the judgment debtor is located, and the lien of such judgment may be enforced in equity before any court having jurisdiction to enforce liens. The clerks of the courts of the several cities and counties shall docket all such judgments on the lien docket of their respective courts when a copy thereof, certified by the clerk of the commission, shall be presented for that purpose.

When Sessions of the Commission Public; Judgments to be Rendered in Public Session; When Judgment Effective; Number, Time and Commencement of Session; One Regular Session Every Three Months.

33. That the sessions of the commission for the hearing of any complaint, proceeding, contest, or controversy instituted or pending before it, whether of its own motion or otherwise, shall be public, and its findings, decisions, and judgments shall be announced and rendered in public session. The judgments of the commission for fines or penalties, or for the recovery of money, shall take effect as of the date of such judgment, and when allowed by the commission in its order and entered up, the judgment shall bear interest from that date. The commission may, by its rules, provide for the number of its regular public sessions in each year, the time of their commencement, their duration, and for their adjournment; and may also provide for extra or special public sessions when, in their judgment, such extra or special public sessions may be necessary or required. The commission shall hold at least one regular public session in every three months in each year.

Appeal to Supreme Court; How Taken and Perfected; to be Heard Promptly, &c.; How Section Construed.

34. That the Commonwealth or any party aggrieved by any final finding, order, or judgment of the commission shall have, of right, regardless of the amount involved, an appeal to the supreme court of appeals, same to be taken and perfected within six months from the date of such final finding, order, or judgment, and the
558 supreme court of appeals may, on petition of the attorney-general, or any other party so aggrieved, if said petition be presented within six months from the date of the final finding, order,

or judgment of the commission, award a writ of supersedeas to any such final finding, order, or judgment, and may review, affirm, reverse, or modify the same, as justice may require, and enter therein such order as may be right and just. All such appeals shall be taken and perfected, heard and determined, and the mandate of the supreme court of appeals certified down to the commission in the same manner as appeals in equity causes from the circuit or corporation courts of this Commonwealth to the supreme court; except such appeals shall be heard and disposed of promptly by the supreme court, irrespective of its place of session, next after *habeas corpus* and Commonwealth's cases already on the docket; provided, however, this section shall not be construed to interfere in any way with the provisions of subsections (*d*), (*e*), (*f*), and (*g*) of section one hundred and fifty-six of the Constitution, as to appeals from the action of the commission, prescribing rates, charges, or classification of traffic, or affecting the train schedule of any transportation company, or requiring additional facilities, conveniences, or public service of any transportation or transmission company, or refusal to approve a suspending bond, or requiring additional security thereon, or an increase thereof; but shall be construed to provide only for appeals from the final findings, orders, and judgments of the commission in cases not expressly provided for by the Constitution.

Suspending Bond on Appeal; Costs, &c.

35. That the commission may require a suspending bond on any appeal, in such penalty and with such surety thereon as it may deem sufficient, and may during the pendency of any appeal, at any time, require the increase of any such bond or additional security thereon; provided, however, there shall be of right, regardless of the amount, an appeal from the action of the commission refusing to approve a suspending bond, or requiring an increase thereof, or additional security thereon, in like manner as provided by subsections (*d*), (*e*), (*f*), and (*g*) of section one hundred and fifty-six of the Constitution. The commission may also require bond for the payment of costs in such penalty, and with such security, as it may deem sufficient, in any complaint, proceeding, contest, or controversy instituted or pending before it. All suspending bonds, and bonds for the payment of costs, taken or required to be taken by the commission, shall be made payable to the Commonwealth, and may be enforced in the name of the Commonwealth by motion or other legal proceeding or remedy before the commission, or in any circuit or corporation court of this Commonwealth having jurisdiction of a motion or action on such bonds, and the process and proceedings thereon shall be as provided by law upon bonds of the like character required and taken by any court of this Commonwealth, and the commission or such circuit or corporation court may render and enter up like judgments upon such bonds as may, by law be rendered and entered upon bonds of like character, and process of execution shall issue upon such judgments, and may be levied and executed as provided by law in other cases.

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Transportation Company upon Final Decision of Appeal to Refund Amount Collected Pending the Appeal in Excess of that Authorized; Penalty; Amount of Judgment Distributed Among Those Entitled Thereto.

36. That if any transportation company, upon the final decision of an appeal from the action of the commission prescribing rates, charges, or classification of traffic, confirming or modifying the action of the commission, shall fail to refund in the manner and within the time prescribed in the notice of the commission all amounts which the appealing company may have collected pending the appeal, in excess of that authorized by such final decision, upon notice to such corporation by the commission of such final decision, then the commission, after thirty days' notice to any such
560 company, may, unless the amount required by such order be paid to the clerk of the commission, render and enter judgment in the name of the Commonwealth, for the use of the persons, firms, and corporations entitled to the same, against any such company for the aggregate amount of such collections and for costs, and may enforce the amount of such judgment and costs by process of execution as hereinbefore provided as to the enforcement of the judgments of the commission. The commission shall, upon the collection of said judgment, forthwith distribute the amount thereof, through its clerk, among the parties entitled thereto, respectively, in such manner as it may by its rules or orders prescribe, and shall, upon the payment or collection of any such judgment, enter the same satisfied upon its records, and have the same entered satisfied on the judgment lien docket of the court of any city or county where the same may have been docketed, and the satisfaction of any such judgment shall be a bar to any further action or recovery against any such corporation to the extent of such recovery.

Accidents.

37. The commission may investigate the cause of any accident on any transportation line which, in its judgment, shall require investigation.

Transportation of Convicts and Insane Persons.

38. The commission is authorized to enter into contracts with the several railroads and other transportation companies, doing business in this State, for the transportation of convicts, insane, or other persons, who are cared for by the State, and of sheriffs and all necessary guards, to and from the penitentiary and the several State hospitals in this State, upon such terms as the commission and the several companies may agree, not to exceed two cents per mile for each person transported under such contract. Said contracts
561 may be renewed or extended for such time as the commission shall deem to be to the interest of the State.

The Commission to Determine the Most Direct Route, Furnish Schedules, &c., to Hospitals and Penitentiary.

39. The commission shall determine the most direct and practicable route from each courthouse by which to convey persons to the penitentiary and the several State hospitals, and shall file with the auditor of public accounts, the superintendent of the penitentiary, the superintendents of the several State hospitals, and the clerks of the several counties and corporations, a schedule of the route determined upon.

The Commission to Furnish Schedule Certificates of Transportation; by Whom Signed; How Companies May Collect on Same.

40. The commission shall furnish with such schedule certificates of transportation in the form agreed upon in its contract with the companies. Said certificates shall be signed by the clerk of the commission, and shall be taken up by the conductor or other agent authorized by said companies to collect fare, as other tickets or fares are collected. They shall be presented by the companies holding the same, either monthly or quarterly, as may be determined upon by the commission and the companies, to the auditor of public accounts, who shall examine the same, and if found correct, pay them as other claims against the State are audited and settled.

The Commission to Furnish Compilation of Statute Laws, &c., Governing Common Carriers, Distribution of Same; Rules to be Posted.

41. The commission shall, annually, on the first day of January, publish a compilation of the statute laws governing common carriers in the State of Virginia, together with a compilation of the rules and regulations prescribed for their government by the commis-
562 sion, and shall furnish a sufficient number of copies to each railroad company or transportation company, or person operating the same, to enable such company or person operating the same to post and keep posted conspicuously in every passenger and freight depot of the company, a copy of such laws, rules and regulations; and every such company, or person operating the same, is hereby required to see that such copies, when furnished by the commission, are posted and kept posted in the manner prescribed.

Seal of the Commission; to What It May be Affixed; Its Force and Effect; Fee.

42. That the commission shall have and use a common seal, to consist of a circular die with the coat-of-arms of Virginia and the title "State Corporation Commission" stamped upon the face of the die, and shall have power to affix said seal to any paper, record, or document when necessary for the purpose of authentication, and such seal, when so affixed to any paper, record, or document emanating from the commission or its clerk's office, shall have the same force and effect for authentication as the seal of any court of record in this State. The clerk of the commission shall collect a tax of one

dollar for each impression of said seal upon any paper, record, or document, for which tax he shall account to the auditor of public accounts, and pay the same into the public treasury as hereinbefore provided.

Docket.

43. That the commission shall keep a docket of all complaints, proceedings, contests, and controversies instituted or pending before it, and all cases shall be numbered on the docket in the order in which they were instituted, and the papers therein jacketed and numbered in the same consecutive order, and when finally determined and disposed of, the papers and files shall be filed and preserved in the same numerical order and properly indexed for convenient future reference.

563 Allowance for Expenses, &c., to be Paid Out of the Public Treasury; Compensation, Mileage, &c., of Witness.

44. The commission shall, by order entered upon the records of its proceedings, make all allowances to be paid out of the public treasury for expenses, witness fees, and mileage, and for service of process, and when so allowed and certified by its clerk to the auditor of public accounts, the last-named officer shall draw his warrant for the payment of the amount of any such allowances out of the public treasury: provided, that the commission shall not allow to any witness exceeding one dollar per day for his attendance, nor exceeding five cents per mile for each mile traveled to and from the place of attendance, and shall not make any allowances to be paid out of the public treasury save when the expenses incurred, the witness attendance, or the services of process, is at the instance of the commission, or on behalf of the Commonwealth.

Register of Corporation; List of Charters to be Furnished by Secretary of the Commonwealth.

45. That the commission shall have made and kept in its clerk's office a register of all corporations, which register shall contain the corporate names of all corporations heretofore chartered and existing at this date, so far as the same may be obtainable, and those hereafter chartered by the laws of this State, and of all foreign corporations heretofore or hereafter licensed to transact business in this State, and as to domestic corporations shall contain also the following information, to-wit: Date of incorporation. Names and residences of officers and directors. Amount of capital stock, and whether preferred or common, or both, and the amount of each. Amount of bonds to be issued. Nature of corporate enterprise or business to be conducted. The place of its principal or general office or place of business.

The secretary of the Commonwealth shall forthwith prepare
564 and furnish to the commission a list of all charters recorded in his office up to April first, nineteen hundred and three, containing the above information so far as shown by the records of his office.

The Commission to Issue All Charters, &c., and to Certify Same under Its Seal to the Secretary of the Commonwealth; Recordation; Granting License to Foreign Corporations; Fees.

46. The commission shall issue all charters and all amendments, extensions, and renewal of charters, upon application, complying with the provisions of the incorporation laws of this State, and when any charter, or amendment, extension, or renewal of charter is issued, shall certify the same, under its seal, to the secretary of the Commonwealth for recordation as required by law, and the commission shall have the granting of all licenses to foreign corporations to transact business in this State. The commission shall, before approving any application or petition for a charter, or granting any license to any foreign corporation to transact business in this State, require the payment of the fees prescribed by law, and on or before the first day of March in each year, in addition to the franchise tax and the fees otherwise prescribed by law, require each domestic corporation, other than a purely charitable institution, and each foreign corporation doing business in this State, to pay a registration fee as follows: Where the proposed maximum capital stock is fixed at fifteen thousand dollars or under, or if such corporation is organized on a mutual basis or without capital stock, five dollars; in excess of fifteen thousand dollars and not over fifty thousand dollars, ten dollars; in excess of fifty thousand dollars and not over one hundred thousand dollars, fifteen dollars; in excess of one hundred thousand dollars and not over three hundred thousand dollars, twenty dollars; and in excess of three hundred thousand dollars, twenty-five dollars; all of which fees shall be collected and received by its clerk and accounted for and paid into the public treasury as hereinbefore provided.

565 The Commission to Designate Depository; Deposits; Checks; Officer Collecting Judgment to Pay Same within Ten Days; Penalty.

47. That the commission shall designate some State depository as a place of deposit for the moneys received by its clerk under this or any future act of the general assembly, and shall require its clerk to deposit therein all moneys received by him at least once in every twenty-four hours, and all checks upon said depository drawn by said clerk shall be countersigned by the chairman or acting chairman of the commission. That the bailiff of the commission, or any sergeant, sheriff, or constable who shall collect any judgment, or any part thereof, rendered by the commission, shall, within ten days after such collection, pay the amount thereof, either in current funds or by certified check, to the clerk of the commission. Any officer of the commission, or any sergeant, sheriff, or constable who shall omit or fail to perform any of the requirements of this section, shall be fined not less than five hundred dollars nor more than one thousand dollars, which may be imposed and judgment rendered therefor and enforced by the commission. All proceedings against any such officer and the surety on his official bond, may be had as pro-

vided by law in reference to official bonds, for default in the accounting for, or payment over, of any moneys collected or received by him under the provisions of this act.

The Commission to Notify Corporation of the Amount of Registration Fee.

48. That the commission shall annually, on or before the first day of December, notify each corporation subject to a registration fee of the amount thereof, and when the same is payable, and when paid its clerk shall promptly receipt therefor to the corporation paying the same, such notice to be mailed to the last address furnished by such company.

565 Free Transportation to Members of the Commission.

49. That all transportation companies operating in this State shall, on the order of the commission, attested by its clerk, or on an order signed by any member of the commission, furnish free transportation to the members of the commission and its officers, when traveling on official business, and the order for such transportation shall show that the same is desired for official business.

Supplies, Printing, Expenses, &c.

50. That the commission shall have authority to purchase all necessary supplies, and to have all necessary printing and publishing done, and to secure all telephone and telegraph service necessary to the efficient discharge of its duties, and the same shall be paid out of the fund appropriated for its incidental and contingent expenses: provided, however, that all printing necessary for the commission shall be done by the public printer on its order.

Report of the Commission.

51. That the commission shall, on or before the first day of December in each year, tabulate and publish in statistical form such reports made to it in pursuance of the Constitution and laws of this State, as required by subsection (*a*) of section one hundred and fifty-six of the Constitution proper, and shall on the same date in each year, make report to the governor as required by subsection (1) of said section, to be by him laid before the general assembly at each regular session thereof.

Impeachment.

52. That any member of the commission who, during the term of his office, shall be directly or indirectly employed by, or hold any office in relation to, any transportation or transmission
567 company, or in any wise become interested therein, financially, or shall engage in the practice of law, or be guilty of misfeasance or malfeasance in office, shall be impeached and removed from office in the same manner provided for the im-

peachment and removal of judges of the supreme court of appeals; and any officer of the commission for like causes, or for neglect of duty, or when, in the judgment of the commission, the public service will be promoted thereby, may be removed from office by the commission.

Board of Public Works and Railroad Commissioner to Surrender Records, Books, &c., to the Commission.

53. The board of public works and the railroad commissioner shall on the second day of March, nineteen hundred and three, or as soon thereafter as requested by the commission, surrender and deliver to the commission the records, books, files, and papers of their respective offices, and thereafter said records, books, files, and papers shall be and remain a part of the records, books, papers and files of the commission.

Salaries.

54. That the annual salaries of the members and officers of the commission shall be as follows: Each commissioner, four thousand dollars; the clerk, two thousand dollars; the first assistant clerk, fifteen hundred dollars; the stenographer, twelve hundred dollars; and the bailiff, nine hundred dollars; and the auditor of public accounts shall draw his warrant upon the public treasury for the payment of said salaries in equal monthly payments for each month of their respective terms of office.

Not to Impair Jurisdiction of Courts; Concurrent Jurisdiction.

55. This act shall not be construed to take away or impair the jurisdiction of any court of this Commonwealth to hear and determine any proceeding, suit or motion of which it now has jurisdiction, for the enforcement of any fine or penalty against any corporation under the laws of this State, but that the powers and jurisdic-
568 tion of the commission to hear, determine, and enforce such fines and penalties shall be construed to be concurrent.

Powers and Duties Vested in Commission.

56. The commission is hereby charged with all the duties and vested with all the rights, property, functions, and powers heretofore performed, vested in, and exercised by the board of public works, except in so far as the same may be in conflict with the Constitution and laws of this State, and the commission shall particularly perform the duties and exercise the powers heretofore performed and exercised by said board, prescribed in sections fifty-nine to seventy-eight, inclusive, of this act.

The Commission or Some Member to Attend the Sale of Work of Internal Improvement in which the State is Interested.

57. The commission, or some member thereof, shall, and is hereby directed and authorized to, attend the sale of any work of internal

improvement in which the State is a stockholder or otherwise interested, whether such sale be made by virtue of mortgage, judgment, decree, or other lien.

When State may proceed against company by *quo warranto* and sell the works for abandonment or failure to use; deed of conveyance to be executed; collection of debts and proceeds of sale; purchaser to become corporation with privileges, &c., of old company.

58. If the works of any internal improvement company be not commenced and be completed within the time prescribed by law, or by its charter, or if after such works be completed, the company abandon them, or for three successive years cease to use and fail to keep them in good repair, in each of these cases the State may proceed against such company by writ of *quo warranto*, or infor-
569 mation in the nature of a writ of *quo warranto*, and if in any such proceeding there is a judgment against the company, the commission shall forthwith take possession of its work and property and sell the same (except the debts owing to the company), and convey the works and property so sold to the purchaser thereof as soon as the purchase money has been paid, the deed of conveyance to be executed by the chairman of the commission under its seal. The commission shall, moreover, collect, as far as practicable, the debts aforesaid, and apply the proceeds thereof, and of the said sale, after deducting the costs and expenses of the collection and sale, to the discharge of the liabilities of the company, and whatever remains after said liabilities are discharged, pay into the treasury of the State. Upon such conveyance to the said purchaser, he shall forthwith be a corporation by any name which may be set forth in such conveyance, or any writing signed by him and admitted to record in the county or corporation wherein the conveyance shall be admitted to record; and to the corporation thus created all the provisions of section twelve hundred and thirty-four of the Code shall apply, except that the franchises, rights, and privileges to which such corporation shall succeed and the duties which it shall perform, shall be such as would have been had or performed by the first company but for the judgment aforesaid in the proceeding by writ of *quo warranto*, or information in the nature of a writ of *quo warranto*, save only as in said section provided.

The Commission May Convey State's Interest in Road to County.

59. It shall be the duty of the commission, with the consent of the board of supervisors of any county given at any regular meeting by a two-thirds vote of all elected in such county, where in their opinion the public interest will be promoted thereby, to transfer and convey the State's interest in any turnpike or plank road, or any part thereof, to the county or counties in which said road lies. The transfer shall be made by a formal order to be entered upon the

minutes of the proceedings of the commission, and a copy to
570 be transmitted by its clerk to the clerk of the circuit or county court for record in the clerk's office in each county where the said road lies.

The Commission to Collect Dividends, &c., from Work in which State is Interested.

60. The commission shall be vested with power to collect any fund or dividend due from any work of internal improvement in which the State is interested, and to pay the same into the treasury to the credit of the sinking fund.

Proxies for Stock Held by State.

61. The commission, for all works in which the State may hold stock heretofore subscribed and not disposed of, shall from time to time appoint one or more proxies to represent the stock held by or on behalf of the State in the company having control of such work: provided, that the present proxies shall hold over until their successors are appointed.

Duty of State Proxies.

62. In cases in which it may be desired by the commission, its proxies shall cause to be transmitted to it copies of the reports of the proceedings of the directors of the companies in which they are proxies, the proceedings of the stockholders thereof, and other documents relating to the works, and shall make such reports as the commission may require or to the proxies may seem proper.

State Directors.

63. In every company to the stock of which the board of public works or the State has heretofore subscribed and which has not been disposed of, the commission shall appoint such portion of the directors as shall bear to the whole number of the directors of such company the same proportion, as nearly as possible, that the
571 stock held on behalf of the State in such company bears to the whole capital stock thereof.

When Appointed.

64. The appointment of directors in a company, according to the preceding section, shall be made by the commission before each annual meeting therein.

Terms of Directors and Proxies.

65. Proxies and directors appointed by the commission shall be in office from the time such appointment is in force until their successors are appointed, unless sooner removed. When a proxy fails to attend at any meeting, the commission, without removing him, may make a temporary appointment, to be in force during his absence.

The Commission to Keep Register of the Property of the State.

66. The commission and the second auditor shall cause to be registered, in books to be kept in their respective offices for the purpose, all claims, stocks, bonds, choses in action, and all property, real or personal, due or belonging to the State, with such description thereof as will enable easy reference to the same by any State officer or person interested.

Money Recovered by Action in Circuit Court of Richmond.

67. Any money forfeited to the commission, and any money which ought to be paid into the public treasury to the credit of the fund for internal improvement, shall be recovered, with interest on such money from the time the same ought to be paid by motion, after fifteen days' notice, or by action in the circuit court of the city of Richmond. The second auditor shall institute and prosecute in the name of the Commonwealth the proceedings after an order for such motion or action shall have been made by the commission.

572 Agents for the Collection of Debts, &c.

68. The commission may appoint agents for the collection of its debts or claims, and authorize them to secure payment thereof on such terms as it may approve, except it shall not appoint an agent to collect any judgment, fine, or penalty rendered or imposed by the commission.

When Commission May Purchase Estate Taken Under Execution.

69. When the estate of any person taken under execution or for sale under any decree or deed of trust for any such debt or claim will not sell for the amount thereof, the commission may purchase such estate.

May Sell and Convey Any Estate so Purchased.

70. The commission may sell any estate so purchased, at such time and on such terms as the commission may deem advantageous, and the commission shall execute a deed conveying to the purchaser all the interest which the commission may have in such land.

Compensation of Agent Under This Act.

71. For the services of any agent under this act, the commission may allow compensation not exceeding in any case, five per centum on the money actually paid into the treasury.

The Commission to Fix Tolls, &c.

72. Where the tolls of any canal, navigation, or bridge company are not prescribed by its charter, the commission shall fix such tolls as may seem to it reasonable, and may alter the same at its pleasure.

573 Assent by Stockholders to Sec. 65 of This Act.

73. If in any company incorporated and organized before the first day of July, eighteen hundred and fifty, to the stock of which the

board of public works or the State has, before or since that date, subscribed, a resolution be adopted in general meeting of the stockholders (by the vote of the majority of the stockholders, other than the State), assenting to section sixty-five of this act, the same shall thenceforth be of the same force in respect to such company that it would be if it had formed a part of the act incorporating such company. If such assent be not given, the votes in the meetings of the stockholders of such company and the appointment of directors therein shall continue to be according to the laws in force on the day before the Code of eighteen hundred and eighty-seven took effect, unless it be a company whose charter is, by the terms thereof, subject to be altered, amended, or modified by the general assembly; in which case the said section sixty-five shall be of the same force in respect to it as if such assent had been given.

Sale by James River and Kanawha Company of Its Works, &c., to Richmond and Alleghany Railroad Company.

74. That so much of the act entitled "an act to authorize the James River and Kanawha Company to make sale and transfer of all its works, property, and franchises to the Richmond and Alleghany Railroad Company, and to define the powers and duties of the board of public works in reference thereto," approved February twenty-seventh, eighteen hundred and seventy-nine, as has not been carried into effect, shall continue in force, and the commission shall exercise all the powers and perform all the duties conferred and imposed upon the board of public works by the said act.

The Commission to Make Report Showing Condition of Work or Company in Which State Has an Interest.

75. The commission shall make report to the general assembly at each regular session, showing the condition of each work made on the State account, or to the stock of which the board 574 of public works or the State had heretofore subscribed, and giving such other information in relation thereto as it may deem pertinent. And the second auditor shall also report to the general assembly, at such regular session a succinct statement relative to every such work, showing the gross amount of the year's income therefrom, the net balance of such income remaining, after paying current expenses, and interest on debts due on account of the work, and what percentage, such net balance is on the capital expended. On or before the first day of October the said reports shall be delivered to the superintendent of public printing, and he shall cause the same to be printed.

76. That subsection twelve of section one hundred and eighty-three, and sections twelve hundred and twelve, twelve hundred and thirty-six, twelve hundred and thirty-nine, twelve hundred and fifty-four, twelve hundred and ninety-eight, twelve hundred and ninety-nine, thirteen hundred, as amended by an act of the general assembly, approved March fourth, nineteen hundred; thirteen hundred and one, thirteen hundred and two, thirteen hundred and three, thirteen hundred and six, thirteen hundred and seven, thirteen hundred and eight, thirteen hundred and ten, thirteen hundred and eleven, as

amended by an act of the general assembly, approved March fourth, nineteen hundred; thirteen hundred and twelve, thirteen hundred and thirteen, thirteen hundred and fourteen, thirteen hundred and fifteen, thirteen hundred and sixteen, thirteen hundred and seventeen, thirteen hundred and eighteen, thirteen hundred and nineteen, thirteen hundred and twenty, thirteen hundred and twenty-one, thirteen hundred and twenty-two, thirteen hundred and twenty-three, thirteen hundred and twenty-four, thirteen hundred and twenty-five, thirteen hundred and twenty-six, thirteen hundred and twenty-seven, thirteen hundred and twenty-eight, thirteen hundred and twenty-nine, thirteen hundred and thirty, thirteen hundred and thirty-one, thirteen hundred and thirty-two, thirteen hundred and thirty-three, and thirteen hundred and thirty-seven of the Code of eighteen
575 hundred and eighty-seven, and sections eleven, twelve, and thirteen of the act of the general assembly of Virginia, approved March third, eighteen hundred and ninety-two, entitled an act to further regulate and control common carriers doing business in this State, and further defining the duties of the railroad commissioner in relation thereto, be, and the same are hereby, repealed.

77. This act shall be in force from its passage.

COMMONWEALTH OF VIRGINIA:

I, D. Q. Eggleston, Secretary of the Commonwealth of Virginia, and keeper of the seals thereof, do hereby certify that the foregoing (excepting the headings to the sections thereof) is a true copy of an act of the General Assembly of Virginia, entitled "An act to put into effective operation the provisions of the constitution relating to the creation, appointment and organization of the 'State Corporation Commission,' its jurisdiction, powers, functions and duties; the qualifications of the members and officers thereof, their appointment and salaries; the location of its offices and places and times of its public sessions; its writs, processes, orders, findings and judgments; appeals from its orders, findings and judgments, and its expenses, etc.," approved April 15, 1903, as the same is published according to law; that said act is still in full force and effect, and has been so continuously since prior to January 1st, 1904,—with this exception, that, by an act approved March 15, 1906, section 58 of the foregoing act was amended, and that said section is printed above as it reads after, instead of before, its amendment.

Given under my hand and the Lesser Seal of the Commonwealth, at Richmond, this 25th day of June, in the year of our Lord nineteen hundred and seven.

[Lesser Seal of the Commonwealth.]

D. Q. EGGLESTON,
Secretary of the Commonwealth and
Keeper of Seals.

576 DEFENDANTS' EXHIBIT No. 3.

COMMONWEALTH OF VIRGINIA:

Department of the State Corporation Commission.

CITY OF RICHMOND, *Tuesday, Oct.* 6, 1903.

The Commission having, as required by law, formulated a set of Rules of Practice and Procedure, in cases and proceedings before it, it is ordered that the same become operative on and after this date, and that they be spread in full upon the minutes of the Commission, and being so recorded in the Order Book, are in the words and figures following, viz:

Rules of Practice and Procedure Before the State Corporation Commission of Virginia.

Public Sessions.

1. The regular Public Sessions of the Commission, sitting as a court, for the hearing of contested cases and matters properly coming before it, will be held at its offices, in the City of Richmond, on the second Monday in January, April, June, September and November in each year. These sessions may be adjourned from time to time, and shall last so long as the business before the Commission, and the public interests may require. These sessions may be adjourned, during their respective terms, to any other place in the State, upon order of the Commission, that the public necessity or the convenience of the parties require an adjournment.

Special judicial sessions of the Commission may be held at any time upon order of the Commission, or a majority of its
577 members, in the City of Richmond, or elsewhere in the State, for the hearing of all matters over which the Commission has jurisdiction.

Parties.

2. All complaints, proceedings, contests, or controversies, before the Commission, shall be instituted in the name of the Commonwealth, as complainant, and the party against whom the complaint is preferred, or the proceeding instituted, shall be the defendant; in all proceedings instituted by the Commission of its own motion, the complainant shall be, "The Commonwealth at the relation of the State Corporation Commission"; in all other complaints and proceedings, instituted by parties, the complainant shall be styled "The Commonwealth at the relation of ——."

Any person, firm, corporation, or association, or any commercial body, may institute a complaint before the Commission. When instituted by an unincorporated association or mercantile body, the complaint must be in the name of a committee of not less than two persons on behalf of such association or body.

When the complaint concerns anything done, or omitted to be done, by a single carrier or other corporation, no other need be made a party, but if it relates to joint tariffs, or questions in which two or more carriers or other corporations are interested all such must be made parties. A complaint may embrace several carriers, or lines of carriers, operated separately, in the same proceeding, when the subject matter of the complaint involves substantially the same violation of the law, or of the rules and regulations of the Commission, by the several carriers or lines. Persons or carriers not originally parties may apply, in any pending case or proceeding, for leave to intervene, and to be heard upon the questions involved. Such application must be by petition, verified by oath, which must set forth the petitioners' interest in the proceeding.

578 Petitions and Complaints.

3. All complaints for the redress of alleged grievances or violation of law by the defendant must be in writing and addressed to the Commission. Such petition or complaint must distinctly and plainly set forth the grounds of complaint, the items being numbered, and the petition or complaint must be verified by affidavit. The name of the corporation, or other parties complained against, must be stated in full, and the address of the complainant, with the name and address of his attorney or counsel, if any, must appear upon the petition, where the complaint is made otherwise than on the motion of the Commission.

Notice.

4. The petition or complaint may be filed before the Commission, or with its clerk, and, thereupon, a notice, in the form of a writ, shall be issued, according to law, by the Clerk, directed to the Bailiff of the Commission or other proper officer, summoning the defendant or defendants to appear before the Commission on the day named therein, which shall not be less than ten days from the filing of the complaint. The said writ and notice, and a copy of the complaint, shall be served upon the defendant or defendants, and return made according to law.

Answers.

5. Upon the day named in the writ, or notice, the defendant or defendants shall file before the Commission an answer in writing, specifically admitting or denying, by items, the material allegations of the complaint, and setting forth the facts which will be relied upon to support any such denial. The answer shall be verified by affidavit, and be signed by the attorney or counsel, if there be such. If the parties are ready, upon the filing of the answer, the Commission may proceed at once to hear the matter of contest. If either party be not perpared for the hearing, then an adjournment may be had
579 and the day for the hearing fixed upon the application of either party, in the discretion of the Commission.

Instead of answering the complaint, defendant or defendants may demur to the same, filing a demurrer in writing on the return day.

Amendments.

6. Upon the application of any party, amendments to any complaint or answer in any proceeding or investigation may be allowed by the Commission, in its discretion.

Stipulations or Agreed Facts.

7. The parties to any complaint or proceeding before the Commission may, by stipulation in writing, filed with the Commission, agree upon the facts, or any portion thereof, involved in the controversy, which stipulation shall be recorded and used as evidence on the hearing. It is desired that the facts be thus agreed upon whenever practicable.

Hearings.

8. Upon the filing of the answer, the hearing will proceed at once, or the Commission will assign the time and place for the same. Witnesses will be examined orally before the Commission, unless testimony or facts are agreed upon, as otherwise provided in these rules. The petitioner or complainant must prove the existence of the facts complained of, unless they are admitted, or the defendants be in default by failing to answer. Facts alleged in the answer must be proved by the defendant or defendants, unless admitted by complainant. In cases of failure to answer, the Commission will take such proof of the charge as may be deemed reasonable and proper, and make such order thereon as the circumstances of the case may require.

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Depositions and Witnesses.

9. The testimony of any witness may be taken by deposition, at the instance of a party, in any proceeding or investigation before the Commission after the same is at issue by the filing of the answer. Such depositions must be after notice, and before the officer required and allowed by the statutes of Virginia. Any party, complainant or defendant shall be entitled to process to compel the attendance of witnesses or the production of books and papers before the Commission. Such process will be issued, for proper service and return by the clerk of the Commission, upon application of any party to the proceeding. When depositions are taken they must be returned to the Clerk of the Commission, as depositions are required by law to be returned to the Clerk of a court of chancery.

Argument.

10. Whenever requested by the proper authorities, the Attorney-General of the State may represent the complainant in any proceeding.

Arguments may be made orally before the Commission or written or printed briefs may be filed in any case within such time as may be prescribed by the Commission in such case. For convenience in reading and filing, it is requested that, whenever practicable, in cases of importance, arguments be printed.

Special Matters.

11. In the performance of special functions of a judicial nature, imposed upon it directly by law, and not instituted by any complaint such as the assessment of property of corporations and other like matters, such notices will be given and proceedings be had, as are required by the statutes under which the Commission acts in the performance of such duties.

581 General Business.

12. The offices of the Commission, on the fourth floor of the City Hall of Richmond, will be open for the transaction of business on week days from 9 A. M. to 6 P. M. When the Commission is not in session, applications for charters and all papers to be presented to the Commission, or filed in its offices, may be left with the Clerk. Official communications by mail should be addressed to the "State Corporation Commission," and not to the Chairman or any member of the Commission individually.

COMMONWEALTH OF VIRGINIA:

Department of the State Corporation Commission.

CITY OF RICHMOND, *8th of January*, 1906.

The books, papers and records of the State Corporation Commission having been removed from the quarters heretofore occupied by it in the City Hall of the City of Richmond to the rooms assigned to it for the use of the members and the clerical force of the Commission, including a room assigned to it for use as a hearing or court-room, all in the restored Capitol Building of the State; and the Commission being now in occupancy and possession of the said rooms and said court-room in the Capitol Building:

It is ordered, That the same be and remain its permanent quarters and hearing or court-room until other provision is made by law.

VIRGINIA, *City of Richmond, To wit:*

We, R. R. Prentis and R. T. Wilson, chairman, and clerk, respectively, of the State Corporation Commission of Virginia, do hereby certify that the foregoing is a full, complete and true copy of the rules of practice and procedure before the said Commission;
582 that the said rules, &c., were prescribed and entered of record as above set forth; that, as is above shown, section 12 of said rules, &c., was, in one respect, amended by the foregoing order of January 8th, 1906; and that, with the exception of said section 12, all of the foregoing rules, &c., are now in full force and effect, and have been so continuously since the 6th day of October, 1903.

In testimony whereof, we have hereunto set our hands and affixed the seal of the said State Corporation Commission, this, the 25th day of June, 1907.

[Seal of the State Corporation Commission of Virginia.]

ROBERT R. PRENTIS, *Chairman.*
R. T. WILSON, *Clerk.*

This day, R. T. Wilson, clerk of the State Corporation Commission of Virginia, to me personally known, appeared in person before me, the undersigned, a notary public in and for the City of Richmond, in the State of Virginia, and, before me, in my said city, subscribed and made oath to the foregoing certificate.

In testimony whereof, I have hereunto set my hand and affixed my official seal this, the 25th day of June, 1907.

[NOTARIAL SEAL.] JNO. S. EGGLESTON,
Notary Public.

583 DEFENDANTS' EXHIBIT NO. 4.

STATE OF VIRGINIA, *City of Richmond, To-wit:*

This day, R. T. Wilson, to me personally known, appeared in person before me, the undersigned, a notary public in and for the city aforesaid, in the State of Virginia, and made oath before me, in my said city as follows:

That he is now, and has been continuously since the 31st day of July, 1906, the clerk of the State Corporation Commission of Virginia.

That, between the 31st day of October, 1906, and the 27th day of April, 1907, the said Commission was engaged a great number of days, in receiving testimony, hearing argument, and otherwise considering, the matters and things involved in and connected with the proceeding before said Commission, which may be called the "Passenger Rate Proceeding," and in which the said Commission, on the 27th day of April, 1907, entered its order prescribing the maximum passenger rates to be charged by the several railroad companies mentioned in said order.

That all of the railroad companies mentioned in said order appeared before the said Commission during the course of said proceeding, filed answers in the same, on the 1st day of November, 1906, produced witnesses before said Commission, introduced much documentary evidence, and made elaborate defences therein.

That the oral testimony adduced before said Commission by all of the railroad companies appearing in said proceeding was taken down by stenographers, and thereafter reduced to writing, and such testimony, together with the documentary evidence also introduced in said proceeding, and the evidence in the "Freight Rate Proceeding," next hereinafter referred to, covers several thousand pages.

That, prior to the said 27th day of April, 1907, the said Commission had devoted several months to the hearing of evidence
584 and argument in a proceeding before it, the object of which was to enter an order relating to *freight* charges to be made by the railroad companies which were parties to that proceeding, which may be called the "Freight Rate Proceeding"; that the *Southern Railway Company, Chesapeake & Ohio Railway Co., Norfolk & Western Railway Co., Atlantic Coast Line Railroad Co.*, and *Louisville & Nashville Railroad Co.*, were all parties to said "Freight Rate Proceeding," and not only filed answers, but introduced much testimony therein; that the oral testimony adduced before said Com-

mission by all of the railroad companies appearing in said "Freight Rate Proceeding" was taken down by stenographers, and thereafter reduced to writing, and such testimony, together with the documentary evidence also introduced in said proceeding, covers several thousand pages; that the said evidence in said "Freight Rate Proceeding" was made a part of the evidence in said "Passenger Rate Proceeding," and that all of the evidence referred to in this affidavit is now in the possession and custody of the said affiant, in his capacity as clerk of the said Commission, and is preserved by him to be made a part of the record of said "Passenger Rate Proceeding" when so ordered by said Commission, in case of appeal in said proceeding.

That the signature next hereunto affixed is the signature of the said affiant.

R. T. WILSON.

In testimony whereof, I, the aforesaid notary public, have hereunto subscribed my signature, and affixed my notarial seal, this the 25th day of June, 1907.

[NOTARIAL SEAL.] JNO. S. EGGLESTON,
Notary Public.

585 DEFENDANTS' EXHIBIT NO. 5.

VIRGINIA:

Pleas before the State Corporation Commission, at its Court-room in the City of Richmond, Virginia, on the 27th Day of April, 1907.

Judicial Case 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

Be it remembered, that heretofore, to-wit: on Tuesday, the 31st day of July, 1906, the following notice and order was entered:

Offices of the State Corporation Commission.

RICHMOND, VA., *31st Day of July*, 1906.

To the Several Steam Railroad Companies doing business in Virginia, and all persons interested:

Take notice, that the State Corporation Commission will, in the City of Richmond, on Thursday the first day of November, 1906, at 12:00 o'clock noon, in accordance with authority conferred by the Constitution of Virginia, and the statutes enacted by the General Assembly of Virginia pursuant thereto, hear and consider any objections which may be urged against a rule, regulation, order, or requirement of the Commission, fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passen-

gers over the line of any railroad company in this State, operated by steam, between points within the State of Virginia, said maximum rate to be observed whether the transportation be entirely over the line of one railroad company, or joint transportation over the lines of two or more companies; and whether the contract for transportation of a passenger or passengers be evidenced by an ordinary
586 ticket between stations, by a mileage book, or otherwise; the Commission to have, as authorized by law, the power and authority from time to time, and as often as circumstances may require, to change or revise the rate, or by rules, regulations and requirements to provide for the more convenient and expedient putting into effect and proper observance of said maximum rate. At the said hearing and consideration of the said maximum rate of two cents per mile, the method, time and extent of promulgating and putting into effect the same, will be heard and determined by the Commission, to the end that a maximum rate for passenger transportation may be put into effect and be made applicable to all steam railroad companies doing business in Virginia, and be properly observed by them in the transportation of passengers.

BEVERLEY T. CRUMP, *Chairman;*
H. C. STUART,
JOS. E. WILLARD,
Commissioners.

And at another day, towit: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Thursday, November 1st, 1906, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

NOVEMBER 1ST, 1906.

In the Matter of Prescribing a Maximum Passenger Rate.

The notice in this proceeding, addressed to the several steam railroad companies doing business in Virginia and all persons interested, having been regularly published as prescribed by law once a week for four successive weeks in the Times-Dispatch, a daily news-
587 paper published in the City of Richmond, this matter came before the Commission for hearing on this day. Several of the railroad companies doing business in Virginia appeared before the Commission, by counsel, and answers were filed on behalf of the Atlantic Coast Line Railroad Company, the Norfolk & Western Railway Company, The Chesapeake and Ohio Railway Company, Seaboard Air Line Railway, Virginia and Southwestern Railway Company, Chesapeake Western Railway Company, the Valley Railroad Company and the Baltimore and Ohio Railroad Company operating

the Winchester and Strasburg and the Winchester and Potomac Railroad, the Southern Railway Company, Richmond, Fredericksburg & Potomac Railroad Company, Washington-Southern Railway Company, and the Virginia and Kentucky Railway Company, and leave was granted to any of the other railroads to file answers herein before the taking of testimony was commenced. Thereupon, the hearing and investigation of the matters involved in this proceeding were continued to Tuesday, th- 4th day of December, 1906, at 11:00 o'clock in the morning.

And at another day, to-wit: At a session of the State Corporation Commission, continued by adjournment at the court-room aforesaid on Tuesday, December 4th, 1906, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *December 4th*, 1906.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered in this proceeding on the first day of November, the matter herein involved came on this day to be heard. Thereupon, the hearing and investigation was con-
588 tinued to Tuesday, the 11th day of December, 1906, at 11:00 o'clock in the morning.

And at another day, to-wit: At a session of the State Corporation Commission, continued by adjournment at the court-room aforesaid on Monday, December 10th, 1906, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *December 10th*, 1906.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered in this proceeding on the 4th day of December, 1906, the matters herein involved came on this day to be heard. Thereupon, the hearing and investigation was continued to Wednesday the 19th day of December, 1906, at 11 o'clock in the morning.

And at another day, to-wit: At a session of the State Corporation Commission, continued by adjournment at the court-room aforesaid on Wednesday, December 19th, 1906, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *December 19th*, 1906.

In the Matter of Prescribing a Maximum Passenger Rate.

589 Pursuant to the order entered in this proceeding on the 11th day of December, 1906, the matters herein involved, came on this day to be heard. Thereupon the hearing and investigation was continued to Wednesday the 16th day of January, 1907, at 11 o'clock in the morning.

And at another day, to-wot: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Wednesday, January 16th, 1907, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *16th Day of Jan'y*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered in this proceeding on the 19th day of December, 1906, the matters herein involved came on this day to be heard. Thereupon by leave of the Commission, the Norfolk and Southern Railway Company, the Louisville and Nashville R. R. Co. and the New York, Philadelphia and Norfolk R. R. Co. filed their respective answers in writing before the Commission. Thereupon the hearing and investigation in this proceeding was continued to Tuesday the 22nd day of Jan'y, 1907, at 11 o'clock in the morning.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Tuesday, January 22nd, 1907, the following order was entered:

590 **No. 99.**

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION

v.

STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *22nd Day of Jan'y*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to order entered in these proceedings on the 16th day of January, 1907, the parties again appeared before the Commission on this day and the taking of testimony herein was commenced, testimony being first adduced by the Chesapeake and Ohio Ry. Co.; and not being concluded on this day was adjourned over for further hearing until to-morrow and ordered to be continued from day to day or from time to time until concluded.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Monday, January 28th, 1907, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION

v.

STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *28th Day of Jan'y*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered in these proceedings on the 22nd day of January, 1907, these proceedings were heard and
591 testimony was taken before the Commission bearing upon the matters at issue herein, by the Chesapeake and Ohio Railway Company and the Norfolk and Western Ry. Co. at public sessions of the Commission held for that purpose on the 23rd, 24th, 25th, of January, 1907, and this day, and testimony not having been concluded at the adjournment of this day, the further taking of testimony and the hearing of all matters involved in this proceeding was continued until Wednesday, January 30th, 1907, at 11:00 o'clock in the morning.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Wednesday, January 30th, 1907, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *January* 30, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered in these proceedings on January 28th, 1907, the hearing of the matters at issue herein was resumed on this day. The Seaboard Air Line Railway Company appeared to-day before the Commission and presented testimony on its behalf bearing upon the matter involved in this proceeding. The testimony of said railroad company having been fully heard, the further hearing of this matter and the taking of testimony herein was continued until Tuesday, the 5th day of February, 1907, at 11 o'clock in the morning.

592 And at another day to-wit: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Tuesday, February 5th, 1907, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *February* 5, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered in these proceedings on the 30th day of January, these proceedings came on to be heard again this day and the further hearing and taking of testimony was continued until to-morrow the 6th day of February at 11:00 o'clock in the morning.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Wednesday, February 6th, 1907, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *February* 6, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered on yesterday these proceed-
593 ings were further heard on this day and testimony was taken before the Commission bearing upon the matters at issue herein, testimony being adduced by the Southern Railway Company, and not having been concluded at the adjournment on this day, the taking of the same and the hearing of all matters involved herein was continued to-day until to-morrow at 11 o'clock in the morning and further ordered to be continued from day to day or from time to time until the further order of the Commission.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the court-room on Tuesday, February 12th, 1907, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *February 12th*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered in these proceedings on the 6th day of February, 1907, the further hearing and taking of testimony herein not being concluded on that day was continued at a public session of the Commission held for that purpose on the 8th day of February, the 11th day of February and this day, testimony being heard on behalf of the Southern Railway Company, the Washington-Southern Railway Company and the Virginia and Southwestern
Railway Company. The taking of testimony and the hear-
594 ing of the matters involved in these proceedings not being concluded on this day, these proceedings are continued until Tuesday, Feb'y 26th, 1907, at 11 o'clock in the morning.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Friday, March 1st, 1907, the following order was entered:

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *1st Day of March*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered herein on the 12th day of February, 1907, the hearing and taking of testimony in this proceeding was resumed on the 26th day of February, 1907, and not being completed on that day was further continued and testimony taken on the 27th day of February and on the 1st day of March and the testimony on behalf of the railway companies which desired to be heard in this proceeding having been completed, the hearing and further taking of testimony herein on the part of the Commonwealth or of any defendant railway companies which may further desire to be heard was continued to a day to be fixed by the Commission of which the parties of record were to be notified.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Wednesday, March 27th, 1907, the following order was entered:

595

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *March 27th*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Counsel of record having been notified that the hearing and consideration of these proceedings would be resumed on this date the parties appeared again before the Commission and further testimony was taken herein. The hearing not being completed on this day, was adjourned and continued until to-morrow morning at 11 o'clock.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Thursday, March 28th, 1907, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *March 28th*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

In these proceedings the parties, by counsel, again appeared before the Commission on this day and the further consideration of the matters involved herein was resumed. The testimony was fully completed on behalf of all railroad companies making objections
596 herein and also on behalf of the Commonwealth and all matters at issue on this hearing and in this proceeding were submitted to the Commission for its consideration and decision and for the entry of such rule, regulation, order or requirement as may be deemed just, reasonable and valid herein. The Commission not yet being advised of such proper order, rule, regulation or requirement time is taken to consider thereof.

No. 99.

And at this day, to-wit: At a session of the State Corporation Commission, continued by adjournment at the court-room aforesaid, the following judgment and order was entered:

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *27th Day of April*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

The State Corporation Commission having carefully considered all the proceedings herein, and all the testimony, exhibits and statements adduced and filed before it in this proceeding, and having put its conclusions in writing, which are made a part of the record herein, the Commission, in order to carry out its said conclusions, now makes the following order and regulations and prescribes the following maximum rates to be observed by all the steam railroad companies operating in the State of Virginia, in the transportation of passengers:

1. It is ordered, that on and after the first day of July, 1907, the following steam railroad companies, viz:

Norfolk and Western Railway Company,
597 Chesapeake and Ohio Railway Company,
Atlantic Coast Line Railway Company,

Seaboard Air Line Railway Company,
Southern Railway Company,
Richmond, Fredericksburg and Potomac Railroad Company,
Washington-Southern Railway Company,
New York, Philadelphia and Norfolk Railroad Company,
Virginia and Southwestern Railway Company,
Louisville and Nashville Railroad Company

shall put into effect and observe a maximum rate of two cents per mile in the intra-state transportation of passengers in Virginia, said maximum rate to be observed whether the transportation be entirely over the line of one of the said railroad companies, or joint transportation over the lines of two or more companies; and on and after the said date it shall be unlawful for the said railroad companies, or any of them, to charge or collect a greater sum than two cents per mile for the transportation of passengers over the lines controlled and operated by them, respectively, except as otherwise allowed in this order, or from time to time, by the State Corporation Commission.

2. It is ordered, that a maximum rate of two and one-half cents per mile for the intra-state transportation of passengers be fixed and prescribed to go into effect on and after the first day of July, 1907, on the following divisions or branches, of the Southern Railway Company, which are now excepted from the operation of the maximum rate of two cents per mile hereinabove fixed.

Norfolk Division, extending form Pinner's Point to Danville, 204 miles, exclusive of so much of the said division as may be in the State of North Carolina;

Franklin Branch, extending from Franklin Junction to Rocky Mount, 37 miles;

Claremont Branch, extending from James River Junction to Claremont, 50 miles.

598 From and after the said date it shal- be unlawful for the Southern Railway Company to charge or collect a greater sum than two and one-half cents per mile for the intra-state transportation of passengers over these divisions, or branches, unless otherwise directed, or allowed by the Commission.

3. It is ordered, that on and after the first day of July, 1907, the following steam railroad companies, viz.:

Chesapeake-Western Railway,
Cumberland Valley and Martinsburg Railroad Company,
Danville and Western Railway Company,
Indian Creek and Pound River Railroad Company,
Marion and Rye Valley Railway Company,
Nelson and Albemarle Railway Company,
Valley Railroad Company of Virginia,
Virginia-Carolina Railway Company,
Virginia Southern Railroad Company,
Winchester and Potomac Railroad Company,
Winchester and Strasburg Railroad Company,
Norfolk and Southern Railway Company,

shall put into effect and observe a maximum rate of three cents per mile in the intra-state transportation of passengers in Virginia, and on and after the said date it shall be unlawful for the said railroad companies, or any of them, to charge or collect a greater sum than three cents per mile for the transportation of passengers over the lines controlled and operated by them, respectively, except as otherwise allowed from time to time by the State Corporation Commission.

4. It is ordered, that on and after the first day of July, 1907, the following steam railroad companies, viz.:

Big Sandy and Cumberland Railroad Company,
Black Mountain Railroad Company,
Interstate Railroad Company,
Lick Creek and Lake Erie Railroad Company,
Mt. Airy and Eastern Railway Company,
New River, Holston and Western Railroad Company,
Potomac, Fredericksburg and Piedmont Railroad Company,
599 Surry, Sussex and Southampton Railway Company,
Tidewater and Western Railroad Company,
Virginia Anthracite Coal and Railway Company,
Virginia and Kentucky Railway Company,
Wise Terminal Company,

shall put into effect and observe a maximum rate of three and one-half cents per mile in the intra-state transportation of passengers in Virginia, and on and after the said date it shall be unlawful for the said railroad companies, or any of them, to charge or collect a greater sum than three and one-half cents per mile for the transportation of passengers over the lines controlled and operated by them, respectively, except as otherwise allowed from time to time by the State Corporation Commission.

5. It is further ordered, that in applying the foregoing maximum passenger rates prescribed for the several railroads in Virginia, the railroad companies may charge and collect a minimum rate of ten cents per passenger for any single haul.

6. The payment of fares subject to the maximum rate herein prescribed shall entitle the passenger to the same transportation of baggage as now allowed by the carriers under, and in connection with the present rates and no steam railroad company operating in Virginia shall change or alter the rules governing the rights of passengers with respect to the transportation of baggage in Virginia, without the consent of the Commission first obtained.

7. Steam railroad companies operating in Virginia may charge and collect in addition to regular ticket rates the fixed sum of ten cents from all cash fare passengers who had been afforded reasonable opportunity for purchasing ticket before boarding train; provided that the conductor shall in all such cases deliver to passengers a receipt for the amount collected, redeemable at any ticket office of the company within thirty days from date of issue.

It is ordered, that the clerk of the Commission do forth-
600 with publish this order in full in one of the newspapers of general circulation published in the City of Richmond, once a week for four consecutive weeks, as required by law.

STATE OF VIRGINIA,
City of Richmond, To-wit:

I, Richard T. Wilson, clerk of the State Corporation Commission, do hereby certify that the foregoing is a true transcript from the judicial order book of the State Corporation Commission, of all orders entered in that certain proceeding lately depending before the said Commission under the name and style of:

Commonwealth of Virginia, at the relation of the State Corporation Commission,
v.
Steam Railroad Companies.

and designated in this office as judicial record 99.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the State Corporation Commission this 25th day of June, 1907.

R. T. WILSON, *Clerk.*

[Seal of the State Corporation Commission of Virginia.]

601 This day, R. T. Wilson, clerk of the State Corporation Commission of Virginia, to me personally known, appeared in person before me, the undersigned, a notary public in and for the City of Richmond, in the State of Virginia, and, before me, in my said city, subscribed and made oath to the foregoing certificate.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal this, the 25th day of June, 1907.

[NOTARIAL SEAL.] JNO. S. EGGLESTON,
Notary Public.

602 *Opinion Referred to in Foregoing Order.*

Passenger Rate Case.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
vs.
STEAM RAILROAD COMPANIES.

In the Matter of Fixing a Maximum Passenger Rate.

Conclusions of the Commission.

Relative to the proceedings to be observed by the State Corporation Commission before it passes upon the reasonableness of any rate which it proposes to put into effect, it is provided in section 156*b* of the Constitution of Virginia, as follows:
tion Commission before it passes upon the reasonableness of any rate which it proposes to put into effect, it is provided in section 156b of the Constitution of Virginia, as follows:

"Before the commission shall prescribe or fix any rate, charge or classification of traffic, and before it shall make any order, rule, regulation or requirement directed against any one or more companies by name, the company, or companies to be affected by such rate, charge, classification, order, rule, regulation or requirement shall first be given, by the commission, at least ten days' notice of the time and place, when and where the contemplated action in the premises will be considered and disposed of, and shall be afforded a reasonable opportunity to introduce evidence and to be heard thereon, to the end that justice may be done, and shall have
603 process to enforce the attendance of witnesses; and before the commission shall make or prescribe any general order, rule, regulation or requirement, not directed against any specific company or companies by name, the contemplated general order, rule, regulation or requirement shall first be published in substance, not less than once a week for four consecutive weeks in one or more of the newspapers of general circulation published in the city of Richmond, Virginia, together with notice of the time and place, when and where the commission will hear any objections which may be urged by any person interested, against the proposed order, rule, regulation or requirement; and every such general order, rule, regulation or requirement, made by the commission shall be published at length, for the time and in the manner above specified, before it shall go into effect, and shall also as long as it remains in force, be published in each subsequent annual report of the commission."

Proceeding in conformity with the foregoing provision of the organic law of the State, the commission, on the 31st day of July, 1906, issued the following notice:

Notice.

Offices of the State Corporation Commission.

RICHMOND, VA., *31st Day of July*, 1906.

To the several steam railroad companies doing business in Virginia, and all persons interested:

Take notice that the State Corporation Commission will, in the city of Richmond, on Thursday, the first day of November, 1906, at 12 o'clock noon, in accordance with authority conferred by the Constitution of Virginia and the statutes enacted by the General Assembly of Virginia pursuant thereto, hear and consider any objections which may be urged against a rule, regulation, order
604 or requirement of the commission fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers over the line of any railroad company in this State, operated by steam, between points within the State of Virginia, said maximum rate to be observed whether the transportation be entirely over the line of one railroad company, or joint transportation over the lines of two or more companies; and whether

the contract for transportation of a passenger, or passengers be evidenced by an ordinary ticket between stations, by a mileage book, or otherwise; the commission to have, as authorized by law, the power and authority, from time to time, and as often as circumstances may require, to change or revise the rate, or by rules, regulations and requirements to provide for the more convenient and expedient putting into effect and proper observance of said maximum rate. At the said hearing and consideration of the said maximum rate of two cents per mile, the method, time and extent of promulgating and putting into effect of the same will be heard and determined by the commission, to the end that a maximum rate for passenger transportation may be put into effect and be made applicable to all steam railroad companies doing business in Virginia, and be properly observed by them in the transportation of passengers.

BEVERLEY T. CRUMP, *Chairman.*
H. C. STUART.
JOSEPH E. WILLARD.
Commissioners.

This notice was published once a week for four consecutive weeks in *The Times-Dispatch*, a newspaper of general circulation published in the city of Richmond.

In accordance with the foregoing notice, the leading railroad companies doing business in the State of Virginia appeared be-
605 fore the commission on the first day of November, 1906, and filed written, or printed, answers, in which were set out in detail the objections which they desired to urge against the proposed maximum passenger rate of two cents per mile. Following upon the filing of these answers, testimony was introduced before the commission from time to time, and all the issues arising in these proceedings were finally submitted to the commission for its determination on the 29th day of March, 1907.

The commission has given careful consideration to the objections made by the railroad companies involving solely questions of law, and to the most voluminous and detailed testimony adduced before it.

We have first to deal with two preliminary questions of law which are urged by the defendant railroad companies in their answers, and which must be first disposed of, as they challenge the right of the commission to take any action in this proceeding.

It is contended, in the first place, that the provisions of article XII of the Constitution of Virginia, providing for the creation, functions, duties and powers of the State Corporation Commission, are in violation of the fourteenth amendment to the Constitution of the United States, in that those provisions of the Constitution of Virginia, in their execution, deprive the defendant railroad companies of their properties without due process of law, and deny to them the equal protection of the laws. It is contended, in the next place, that as to all the defendant railroad companies whose charters were granted by the State of Virginia prior to the adoption of the new Constitution in July, 1902, there existed a contract between the State

and the said railroad companies whereby it was agreed that the State would not undertake to prescribe the tolls or charges upon the said railroad companies, and that the provisions of the Constitution and laws of the State of Virginia conferring upon the State Corporation Commission power to prescribe rates impaired the obligation of that contract, and that hence the commission has no power to fix or prescribe a maximum passenger rate in this proceeding.

606 The first objection above mentioned is based upon the fact that the Constitution of the State, in creating the State Corporation Commission, has conferred upon it judicial, executive and legislative powers; that the commission has authority to consider, prescribe and put into effect rates to be charged by the railroads, and has likewise power, as a judicial tribunal, to pass upon the reasonableness of the rates so proposed by it. The position is taken that a tribunal thus created is unlike the regular courts to which other persons in the State may submit their controversies, and that, in being required to come before such a tribunal, they are denied due process of law, and likewise equal protection of the laws.

It is unnecessary for the commission to consider this objection at length, as it has been recently passed upon by the Supreme Court of Appeals of Virginia. In the case of *Winchester and Strasburg R. R. Co. vs. Town of Strasburg*, decided by the Supreme Court of Appeals of Virginia on December 6, 1906, on appeal from the commission, this question was discussed at length by the court, and the provisions of the Constitution were upheld as valid, and not in violation of the fourteenth amendment to the Constitution of the United States, although the commission had clearly conferred upon it, to a certain extent, judicial functions as well as legislative and administrative authority.

The second objection urged by the defendant railroad companies as a matter of law is based upon certain provisions of the statutory law of Virginia, which have been in effect for many years, and which are now contained in sections 1202, 1240 and 1242 of the Code of Virginia of 1887. These sections of the Code are portions of the general railroad law of the State. It is provided in section 1240 that the charter of every company, which is governed by an act passed in March, 1837, prescribing certain general regulations for the incorporation of railroad companies, and the charter of every company theretofore or thereafter incorporated, which shall be governed by that chapter, "may be altered, modified, or repealed by any future legislature as may seem to it proper, except that no law

607 shall be passed for taking from a company its works or property without making to it just compensation, or for changing its tolls without its assent, in any other cases than such as are specially provided for in this chapter." In section 1242 it is provided that laws may be passed reducing the tolls of a railroad company when its net profits shall be such that dividends might be declared out of such net profits exceeding the rate of fifteen per centum per annum on the capital stock invested; but that no law shall reduce the tolls so as to prevent dividends at fifteen per centum per annum within thirty years from the time when the first dividends

of profits were declared, or so as to prevent dividends of twelve per centum per annum after the said thirty years, and before fifty years from the same time, or so as to prevent dividends of ten per centum per annum after the said fifty years.

It is alleged in the several answers that the railroad companies have not at any time earned such net profits as would enable them to declare the respective dividends mentioned in this statute. It is insisted that therefore, the State has contracted with the railroad companies that no laws should be passed changing their tolls or charges without their assent until such dividends as are contemplated by the statute have been earned. The question before the commission, therefore, is whether such a contract exists, and whether the present provisions of the Constitution of Virginia and the statutes enacted in pursuance thereof constitute an impairment of the obligation of that contract.

We do not deem it necessary to discuss this question at length, but content ourselves with referring to a recent case decided by the Circuit Court of the United States for the Western District of Texas. See *Houston and T. C. R. R. Co. vs. Storey*, 149 Fed. Rep. 499. In that case a bill was filed by the railroad companies to enjoin the enforcement of rates established by the Railroad Commission of Texas. The railroad companies alleged that there existed a contract between them and the State of Texas which precluded the State and
608 the railroad commission from prescribing the rates in question. The section of the Texas statutes relied upon was as follows:

"It shall be lawful for the legislature at any time to prescribe the rates to be charged for the transportation of persons and property upon any such road, should they be deemed too high, and may exercise the same power every ten years: provided, that no reduction shall be made unless the net profit of the company for the previous ten years, the expenditures of the company being *bona fide* and not with a view to defeat the operation of this section, shall amount to a sum equal to twelve per centum per annum upon its capital stock, and then so as not to reduce the future probable profits below said per centum."

The question of the existence of this contract arose upon a demurrer to the bill, and is not discussed at length by the court. The court refers to *L. & N. R. R. Co. vs. Kentucky*, 183 U. S. 503; *San Antonio Traction Company vs. Altgeld*, 200 U. S. 304, and *Chicago, &c., R. R. Co. vs. Minnesota*, 134 U. S. 455, and holds, upon the authority of these cases, that there was nothing in the charter of any of the companies which expressly or by implication exempted them from liability to future legislation as to the prescribing of rates, and hence no contract between the State and the railroads, respectively, arose; that all the companies, whether chartered by special act of the legislature or under the general laws of the State, took their charters subject to the general law, and to such changes as might be made in the general law, and subject to future constitutional provisions and future general legislation.

In *Louisville and Nashville R. R. Co. vs. Kentucky*, one of the

cases relied upon by the Circuit Court, the Supreme Court of the United States says:

"In the absence, then, of any express prior contract between the State and the company exempting the latter from future con-
609 stitutional enactments, and without conceding that even such a contract would avail to relieve the company from constitutional changes in the exercise of the general police power of the State, it is sufficient to say that we do not find in section 218 of the Constitution of Kentucky any impairment of an existing contract between the State and the plaintiff in error."

It will be seen, therefore, that the Supreme Court of the United States does not concede the validity of a contract of this character between the State and a railroad company. This is based upon the general principle that one legislature cannot make such a contract as will prevent subsequent legislatures, or a constitutional convention from the exercise of the police power. This is a question of great importance and interest which it is unnecessary for us to allude to further than to say that, in the present state of the law, this commission must necessarily uphold the right of the State of Virginia to exercise unfettered the police power inherently residing in the State government. An examination of the charters of the several railroad companies which have appeared in this proceeding leads the commission to the conclusion that there is no language in any of them by which a contract, either expressly or impliedly, could be held to have been made with the State whereby the State had relinquished its governmental power to fix and prescribe reasonable rates to be charged by the railroads, with the possible exception of the charter of the Richmond, Fredericksburg and Potomac Railroad Company. The charter of this company is a very old charter, and it has been held by our State court that, under this charter, the property of the railroad company is exempt from taxation. The power of taxation, however, and the right of the government to prescribe rates rest upon different principles.

The commission overrules the objection that the rate-making power as exercised by the commission in this proceeding constitutes an impairment of the obligation of a contract between the State and the railroad companies as to the Richmond, Fredericksburg and Potomac Railroad Company.

610 It is also to be observed that the charters of some of the defendant railroad companies fall within the scope of the decision of the Supreme Court of the United States in *Norfolk and Western Railroad Company vs. Pendleton*, 156 U. S. 667.

The further objection is made that the adoption and promulgation of the proposed maximum passenger rate would, because many interstate passenger rates are made, and necessarily made, on combinations of locals, or by use of the local rate as a factor, necessarily disturb and regulate the interstate commerce of railroads to such an extent as to come within the purview of the clause of the Federal Constitution relative to interstate commerce. The commission is of the opinion that this objection is clearly untenable.

The defendant railroad companies maintain that a maximum

passenger rate of two cents per mile in Virginia would be unreasonable, or confiscatory. It has been strongly contended before the commission, as to each of the railroads involved, that a lowering of the maximum passenger rate in effect upon each of those roads would so affect their earnings as to make the lower maximum passenger rate unreasonable and unjust.

At the same time that the commission has been considering the question of a maximum passenger rate, it has also had before it proceedings having for their object the promulgation and putting into effect of an uniform Virginia freight classification, and freight tariffs thereunder. These two proceedings are designated, respectively, as the passenger rate case and the freight rate case. The freight rate case was taken up first, and by agreement any of the testimony adduced before the commission in that proceeding may be regarded also as testimony in the passenger rate case. So that in passing upon this matter of a maximum passenger rate, the commission will consider the records in both cases and all testimony, exhibits, facts and statements contained in both records, so far as pertinent.

The testimony taken before the commission as to the organization, the financial conditions, the earnings, and the present and future economic conditions of each of the roads appearing before the commission, has been most voluminous, and the commission
611 cannot undertake to analyze and tabulate the testimony in detail. The commission desires, however, before referring to the evidence, to examine briefly the underlying principles, so far as they have been settled, by which the reasonableness or confiscatory character of a rate is to be judged.

By the Constitution and laws of Virginia, the State Corporation Commission is vested with the legislative authority to make a rate. It is settled by statute and by adjudication that the commission has the right, and is constrained by the provisions of our Constitution, to pass upon the judicial question of whether or not the rate proposed by it is reasonable. Under the terms of the Constitution of Virginia, full provision is made for notice to the railroad companies, and every opportunity is given to test before the commission the question of the reasonableness of the proposed rate. There can be no question but that due process of law is afforded to the railroad companies under the procedure by which the State Corporation Commission is bound, and, therefore, the objection sustained in *Chicago, Milwaukee and St. Paul Railroad Company vs. Minnesota,* 134 U. S., 418, does not apply to the method of this commission in prescribing and putting into effect a rate. This commission is required, sitting as a court, to pass upon the judicial question of whether or not the rate proposed by it is reasonable, and from its judgment on that question an appeal is given from it, as a judicial tribunal, to the Supreme Court of Appeals of the State. We are required, therefore, to determine whether or not a maximum passenger rate of two cents per mile in Virginia, in the intra-state business of the railroads doing business in the State, is reasonable, and if not, what maximum passenger rate is reasonable as to all of the roads, or as to the roads placed in several different classes. We must endeavor to determine

briefly what are the principles by which the reasonableness of a rate is to be judged, and what the term reasonableness, applied to rates, means as a judicial question.

As we shall see, it is somewhat of a misconception to speak of the rate itself as being reasonable, because the reasonableness of
612 the rate depends in the end upon whether or not the rate is so unreasonably low as to constitute a violation of the rights secured to the railroad by the fourteenth amendment to the Constitution of the United States.

Reduced to its proper analysis, the defense of the railroad companies rests upon their allegation that the maximum rate proposed in this proceeding would so reduce their earnings as to deprive them of a reasonable income from their property without just compensation, and that to so deprive them of a reasonable income without compensation is to deprive them of due process of law within the extended meaning of that term as used in the fourteenth amendment; and that they are denied the equal protection of the laws because they are deprived of a reasonable income from their property without compensation, while other persons receive compensation for property appropriated by the State. The argument is that, to deprive the railroad of a reasonable income from its property, is the same as taking property itself, and this would seem to be true. An unreasonable rate is such a rate as is calculated to reduce the railroad earnings below the point of reasonableness. The term reasonableness, therefore, in the end, applies rather to the earnings of the railroad than to the rate itself. Understood as above stated, it is very common and natural to speak of the rate itself as being reasonable or unreasonable, and is a short method of stating the question as to whether or not the rate will unreasonably reduce the earnings of the railroad company.

What are the general considerations by which the commission should be guided in determining, from the facts before it, whether or not a maximum passenger rate of two cents per mile will unreasonably reduce the earnings of the railroads and so take their property without just compensation, and deny them the equal protection of the laws?

It is impossible to answer this question briefly, and it is equally impossible to answer it clearly and completely. Being a question arising under the Constitution of the United States, the decisions of the Supreme Court of the United States should be looked to
613 as controlling. Quite a large number of cases have now been decided by that supreme tribunal of the country bearing upon the reasonableness or confiscatory nature of rates prescribed by State legislatures, or by State commissions. A rate which is unreasonable is often termed to be confiscatory, because, if it takes the property of the railroad without compensation, it is in the nature of confiscation. While the doctrines which should control and guide a judicial tribunal in passing upon the question as to whether a proposed rate will reduce the earnings of a railroad unreasonably cannot be said to have been clearly enunciated and well settled, yet the Supreme Court of the United States has, in several cases, been called upon to deal directly with these doctrines. Without referring to all

of the cases which have been before that tribunal, we think it may be said that the following are the leading cases in the sense that they mark the several *stadia* in the development of these doctrines:

Chicago, Milwaukee and St. Paul Railroad vs. Minnesota, 134 U. S. 418; *Reagan vs. Farmers' Loan and Trust Company,* 154 U. S. 362; *Covington and Lexington Turnpike Road Company vs. Sanford,* 164 U. S. 578; *Smyth vs. Ames,* 169 U. S. 466; *San Diego Land and Town Company vs. National City,* 174 U. S. 739; *Minneapolis and St. Louis Railway Company vs. Minnesota,* 186 U. S. 257.

These cases refer to the intermediate decisions in such a way as to give a very fair presentation of the progress of the court-made law, and of the present condition of the doctrines enunciated by the court on these subjects.

From the cases we deduce the following general principles:

1. The rate enacted by the legislature, or otherwise proposed by the State, stands, as other legislation or action of a State, as valid and constitutional, and hence the burden is upon the railroad company of showing that the rate so enacted or proposed will reduce its earnings to a point which amounts to the confiscation of its property, or to the taking of its property without compensation. *Atlantic Coast Line Railroad vs. Florida,* 203 U. S. 256.

614 2. The railroad company may show that the proposed rate, when applied to its business, will not yield it a reasonable return on the fair value of the property used in the services for which the rate is paid. The return or profit which the railroad company is entitled to must not, therefore, be reckoned upon the capitalization of the company, but upon the reasonable value, or fair value, of the property used by the railroad for the public convenience. In other words, in considering this question, the real value of the property must be looked to, and not a fictitious value based upon the issuance of securities.

3. The Supreme Court of the United States has repeatedly declared that the railroad's right to earnings must also be limited by considerations relative to the rights of the public. This has been declared in nearly all of the cases above named, and in others. It is held that rates must be just, both to the public and the railroad. Thus, in the Reagan cases, it was stated:

"It is unnecessary to decide, and we do not wish to be understood as laying down as an absolute rule, that in every case a failure to produce some profit to those who have invested their money in the building of a road is conclusive that the tariff is unjust and unreasonable."

Again, Justice Harlan, speaking for the court in the Smyth case, said, with reference to the contention that rates ought to permit the payment of dividends as well as of expenses:

"In our opinion, the broad proposition advanced by counsel involves some misconception of the relations between the public and a railroad corporation, is unsound in that it practically excludes from consideration the fair value of the property used, omits altogether any consideration of the right of the public to be exempted from unreasonable exactions, and makes the interests of a corporation

maintaining a public highway the sole test in determining
615 whether the rates established by or for it are such as may be rightfully prescribed as between it and the public."

The court in other cases has made numerous utterances to the same effect.

4. Other circumstances and conditions recognized by the court as important in determining the reasonableness of a rate, or of a railroad's income are economic in their nature, as they pertain to the industrial condition of the country through which the road is built, and other such considerations. In the Minnesota case, reported in 186 U. S. 268, it is suggested that a case may occur in which the condition of the country is such that rates high enough to pay operating expenses would be exorbitant, and would not be justified. While this statement was made in the course of the opinion in a general way, and rather as *obiter dictum*, it shows what a wide scope of consideration the court has in determining questions of this character. In the Reagan cases it was held that, if the road was unwisely built in localities where there is not sufficient business to sustain the road, the public are entitled to reasonable rates, and should not be made to suffer for the bad judgment of the railroad builders, although those rates may not yield earnings sufficient to remunerate the investors. In the Covington case it was held that, although the competition of new lines may reduce the business of the older lines, still the older line would not be justified in making rates unjust to shippers and the public, but must be content with smaller earnings. In the Smyth case the court was called upon to determine the reasonableness of a proposed general freight schedule or tariff of rates. The opinion of the court is based very largely upon tabulated statements showing the average reduction in gross earnings which would follow from an application of the proposed new freight tariff to the business of the road during the three years preceding. To what extent the court had before it the facts relative to the economic conditions of the country and probable earnings of the roads in
616 the future does not appear. It would rather seem that the evidence, if any, on these questions was very meager, so that the court would not speculate as to the future.

The case this commission is now dealing with relates altogether to a general maximum passenger rate, while in the Smyth case the questions dealt with by the court were greatly complicated by the application of an entirely new freight tariff to the business of the several roads in Minnesota. It is clearly shown in our case that a reduction in passenger rates will produce increased travel, so that the application of the proposed maximum passenger rate to the past business of the companies does not constitute a test which absolutely determines the result of the reduction in the maximum passenger rate. It is manifest that in the Smyth case the court did not have before it the full evidence on this point which has been adduced before the commission. Increased business following a reduction in rates is a circumstance which necessarily has more weight in considering a passenger rate than in considering a system of freight rates; while freight traffic may be somewhat stimulated by a reduction of rates, yet the great bulk of it is controlled by general indus-

trial conditions which apply with a less degree of force to passenger travel.

5. Another matter which is allowed consideration is the character of the administration of the road. If the organization and operation of the road has not been business-like and economical and fair, the company's objection to the rates of the legislature, or of the commission is greatly weakened. In other words, all the expenditures of the company of every character charged against the gross earnings may be carefully examined, analyzed and criticised, as well as all the items coming under the general head of operating expenses. In the Reagan cases it was declared that, if there has been waste in the management of the road, if the company has been paying enormous salaries or has been indulging in unjust discriminations, resulting in general loss, it cannot fairly object to a reduction in its rates. In
the Wellman case, 143 U. S. 345, the court declared that they
617 should be fully advised as to what had been done with the earnings of the road, "for if so advised, it might clearly appear that a prudent and honest management would, even under the rates prescribed, secure to the bondholders their interest, and to the stockholders reasonable dividends."

The foregoing are some of the leading circumstances and considerations by which we are to be guided in determining what maximum passenger rate would be a reasonable rate to apply to the railroads in Virginia in their intra-state traffic. To undertake to enumerate in great detail all the principles applicable to the rate cases as enunciated by the Supreme Court of the United States would require a most elaborate analysis of the various cases decided by that court, which would extend this opinion far beyond its proper limits. While reasonableness of the earnings of the railroad, which constitutes the crucial test in determining the validity of the proposed rate, must be judged by the principles so far laid down in the adjudications, yet in the end each case must depend upon its own circumstances. As was stated in the San Diego Land and Town Company case, quoting from the Covington case,

"each case must depend upon its special facts; and when a court, without assuming itself to prescribe rates, is required to determine whether the rates prescribed by the legislature for a corporation controlling a public highway are, as an entirety, so unjust as to destroy the value of its property for all the purposes for which it was acquired, its duty is to take into consideration the interests both of the public and of the owner of the property, together with all other circumstances that are fairly to be considered in determining whether the legislature has, under the guise of regulating the rates, exceeded its constitutional authority, and practically deprived the owner of property without due process of law."

The commission recognizes clearly the general principle established in *Smyth vs. Ames*, which seems to be now fairly well
618 settled; that is, that the railroad company is entitled to a fair return on the reasonable value of its property. What is the reasonable value of the property upon which the railroad company

is entitled to the fair return or earnings is to be determined in the light of the general considerations above mentioned, and by all the principles so far laid down by the courts in considering these questions. In *Smyth vs. Ames*, it is stated that in determining the value of the property used in the service of the public, and upon which a return is to be estimated, the following circumstances may be considered:

(1) The original cost of construction;

(2) The present, as compared with the original, cost of construction;

(3) The amount expended in permanent improvements;

(4) The amount, in market value, of the stocks and bonds issued by the corporation;

(5) The probable earning capacity of the road under the proposed rates;

(6) The amount of operating expenses; and

(7) Other matters which may be properly considered, according to the facts in each case.

The last consideration amounts to saying that each case must be judged by its own facts.

It is almost certain that the evidence before the commission presents every possible fact and consideration bearing upon the reasonableness of a maximum passenger rate of two cents per mile more fully and extensively than any of the cases which have been before the Supreme Court of the United States. After listening for several months with great care to the testimony adduced before the commission, and upon careful scrutiny of all facts appearing from the testimony, the tabulated statements and all other data and exhibits filed before the commission, we are of opinion that it will not unreasonably reduce the intra-state earnings of railroads in Virginia calculated upon a proper basis, should the commission put
619 into effect a maximum passenger rate less than the prevailing maximum rate, which, as to nearly all the roads, is three cents per mile.

The investigation on which the conclusions of the commission are based was perhaps the most extensive and exhaustive in its scope of any yet undertaken by rate-making bodies. The record in the freight rate cases, covering several thousand pages of typewritten matter, and the exhaustive record in the passenger rate cases, are considered together in so far as either of these records throws light on the subject before us. While the evidence has been carefully considered in its applicability to each individual company and its peculiar conditions, regarded separately, yet we do not deem it necessary or practicable to review all the evidence with the same detail in this paper, but will herein confine ourselves to an application to the evidence of those general principles which the courts have held should control the judgment and discretion of a rate-making body, deducing therefrom such conclusions as are fair, just and reasonable to the several groups of roads and dealing separately with a company only when some peculiar fact or condition differentiates it from the others of the group to which it otherwise belongs.

Proceeding along this line, we recognize not only the binding force, but the justice of the general principle that a carrier has the right to earn its operating expenses, and a fair return upon a fair value of the property used in the service. In order to reach a result in this case which shall conform to this principle, a number of facts must be, as far as possible, ascertained and determined, among the most important of which are:

(1) The gross earnings of the carrier on all its Virginia business, both inter and intra-state;

(2) The expense of conducting such business;

(3) The gross earnings derived from its Virginia intra-state business;

(4) The expense of conducting such purely intra-state Virginia business;

(5) The fair value of the carrier's property used by it in all its Virginia business;

620 (6) The fair value of the carrier's property used by it in its intra-state Virginia business;

(7) A fair and reasonable margin of profit which the carrier should be allowed to earn upon its intra-state Virginia business.

It is manifestly impossible, in the very nature of the case, to ascertain exactly any one (except the third) of the seven matters above enumerated; but the testimony submitted by the defendant carriers in this proceeding, and the facts brought out in cross-examination by members of the Commission and by counsel for the Commonwealth enabled all those matters to be ascertained with sufficient practical accuracy for the purposes of this proceeding.

It may be proper to call attention at this point to the fact that, while the roads generally have stated their passenger *earnings* separately from their freight and other earnings, yet they have, with perhaps one exception, failed entirely to make any effort at a division between the *expense* of conducting passenger business and that of conducting freight, or other business. Thus we are without such information as will enable us to determine with accuracy the separate net profits of passenger, freight, mail, express and miscellaneous business, respectively. It is, therefore, necessary, in approaching a solution of the question before us, that we consider the earnings of the roads on all Virginia business of every kind on the one side, and the expense incurred in conducting all Virginia business of every kind on the other.

Taking up now the first of the said seven principal matters to be ascertained, namely, the gross earnings of the carrier on all its Virginia business, both inter-state and intra-state, it will be found that the evidence supplying this information, with reasonable accuracy, is furnished not only by the testimony of witnesses adduced in this proceeding, but by the operating reports of the several companies on file in the office of this Commission, and which are made a part of the record in these proceedings.

621 The establishment of the second principal fact above mentioned, viz: the expense of conducting the carrier's entire Virginia business—both inter- and intra-state—has been attempted by all the roads with varying accuracy, though every company has

included in its operating expenses items which are not properly so classified.

The third matter, as to earnings derived from all Virginia intra-state traffic, has been satisfactorily fixed, in the case of all the roads appearing in this proceeding by the testimony and statistics in the evidence; and some of the roads have undertaken to state separately their earnings from intra-state passengers and from intra-state freight.

We proceed, therefore, without difficulty until we reach the fourth principal matter, which is as to the expense of conducting purely intra-state business, freight, mail, express, passenger and miscellaneous. A great mass of testimony was submitted by several of the carriers in an effort to show that the cost of conducting intra-state business was materially greater than that of conducting all business, and therefore still greater than that of conducting inter-state business. Some of the roads claimed that this excess of expense on intra-state business was not less than fifteen per cent. of the expense of conducting all business of the system; others claimed that it cost not less than fifteen cents more to earn a dollar on intra-state traffic than on inter-state traffic. Some of the roads claimed that the excess cost was greater than this. It was contended on behalf of the roads that the Supreme Court of the United States had, in the case of *Smyth vs. Ames*, 169 U. S., page 466, established as a matter of law a particular ratio between the cost of different kinds of railroad business. That case, however, does not sustain any such construction, and the evidence in this case fails to show that the intra-state Virginia business of the railroads yields a smaller percentage of profit than does their inter-state business; and the Commission, upon the whole evidence, is of opinion that it is not so.

The argument advanced in support of the opposing theory is largely based upon the assumption that local traffic and intra-
622 state traffic are interchangeable terms; whereas, as a matter of fact, such is not the case, but, on the contrary, a large amount of intra-state traffic is carried by what might be termed "through movement," while a large amount of inter-state traffic, in whole or in part, by what might be termed "local movement."

It has been held by the Railroad Commission of Wisconsin, after an exhaustive investigation of the subject, that as much intra-state traffic is carried by through movement in that State as is carried by local movement, and that as much inter-state traffic is carried by local movement as by through movement. The evidence in this case shows that the same is very largely true as to Virginia traffic; hence we conclude that any evidence based upon the theory that intra-state traffic is approximately all local, or that inter-state traffic is approximately all through, is necessarily misleading.

It may be admitted, however, that a large proportion of intra-state traffic takes local movement, and is subject, therefore, to the relative high expense of short haul movement; but when we consider that the local or short haul rate is relatively much greater per ton per mile or, a purely mileage basis than the through long haul rate, and when to this is added the further fact that the local movements are usually conducted between small points unaffected by competition,

while the through movements are usually between large points, and, therefore, more or less influenced by competition, we must see that the excess of the local over the through rate becomes still greater. When we consider these things, it is apparent that the difference in the rate in the two cases is certainly large enough to offset fully any probable difference in the cost of handling and transporting the two classes of traffic. Indeed, the existing short haul rates, which, as just stated, are rarely affected by competition, have always been fixed by the free and voluntary action of the carriers themselves, without restraint, and with a view to covering fully any excess cost which may be incident to traffic moving under these rates; and an examination of the rates applicable to short hauls will show that the traffic departments of the carriers have not been unmindful of
623 the difference between the cost of the short haul local movements on the one side, and the long through movements on the other, even though both movements are performed within the State. As illustrative of this, the testimony of Mr. Coxe, a witness of the Norfolk and Western Railway, shows that the average length of their through hauls was 230 miles, and the average length of their local hauls 68 miles; and the existing tariffs of that road show that the average charge per ton per mile under a 68-mile haul under the class rates is more than double the average charge per ton per mile on a 230-mile haul; and the same comparison when made between commodity rates illustrates the same principle. This is practically true of all the roads. From the evidence in these proceedings and from the considerations aforesaid, the commission finds that the profitableness of conducting intra-state freight traffic is proportionately not materially, if at all, less than the profitableness of conducting inter-state freight traffic.

So much for the freight traffic; but when we consider the passenger, mail, express and miscellaneous business of the roads, the case is much stronger. As a rule, the shorter hauls of passengers are conducted on the regular ticket rates, which are the higher rates; but the assumed additional cost of conducting local *freight* traffic, growing out of the fact that a great part of it must be handled in and out of cars and stations, will not apply to *passenger* traffic, since passengers handle themselves. In addition to this, there are many expenses connected with the through passenger service that are not connected with the local passenger service, such as vastly more expensive train equipment, the maintenance of passenger soliciting offices off the line of the road, the maintenance of a very much higher class of service, &c., &c.

We find that a large amount of intra-state passenger traffic is conducted on through trains, which are claimed to move at a minimum cost per passenger per mile. We find also that a considerable volume of inter-state passenger traffic is conducted on local trains, which are claimed to move at a higher cost per passenger per mile.

From these and other considerations, we cannot escape the
624 conclusion that the Virginia intra-state passenger traffic of each road involved in these proceedings is, in the aggregate, fully as profitable, in proportion, to such road as is its inter-state passenger traffic. As to the mail and express business of the rail-

roads, the evidence is clear, and from the nature of the business it is manifest that the local mail and express business, so far as the railroad company is concerned, costs no more than does the through mail and express business,—the rates being higher, however, on local than on the through, it follows that the local mail and express business of the roads is more profitable than the through.

Finally, the miscellaneous earnings of the road, consisting chiefly of such things as rentals, demurrage, switching, &c., are all purely local, and not, strictly speaking, items of transportation at all, but, in the matter of profitableness, this branch of the road's business is the same whether the traffic upon or in connection with which it is performed, is local or through.

Having seen that, all things considered, the profitableness of intra-state freight traffic in Virginia is proportionately not materially, if at all, less than that of inter-state Virginia traffic; that the profitableness of Virginia intra-state passenger, mail, express and miscellaneous business is proportionately not materially, if at all, less than that of inter-state Virginia passenger, mail, express and miscellaneous business, it follows that the profitableness of the *whole* Virginia intra-state business is proportionately not materially, if at all, less than that of the whole Virginia inter-state and intra-state business combined.

This conclusion is strengthened by consideration of the fact that the great bulk of the inter-state traffic in Virginia is of such character as is moved by the heaviest power and equipment, representing the heaviest burden, and which imposes the necessity for large expenditure of money on road-bed, track, bridges and terminals, thereby increasing the investment in property far beyond the figure which would be necessary if all traffic were of the same character as average intra-state traffic. To this may be added the fact that the cost of the heavier power and equipment used in transporting average inter-state traffic is also greatly in excess of the cost of power
625 necessary to, or actually used in, the movement of average intra-state traffic, to say nothing of the wear and tear on the rails and on the road-bed incident to the movement of heavier inter-state traffic.

Having thus compared the profitableness of Virginia intra-state business with that of Virginia inter-state business, and having seen that there is no material difference in the comparative profitableness of the two, it is plain that the entire operating expense of doing all business in Virginia should be apportioned between inter- and intra-state business, in the proportion which those branches of the road's business bear to each other in amount—that is to say, in the proportion which the gross earnings from inter-state business bears to the gross earnings from intra-state business; and since the intra-state Virginia business contains a larger proportion of short hauls than does the inter-state Virginia business, it follows that the amount of the road's plant—railroad and equipment—employed in earning one dollar of intra-state gross revenue is certainly not more—and is probably materially less—than that used in earning one dollar of Virginia inter-state revenue.

From these considerations it follows that the percentage of the

entire expense of all Virginia business which Virginia intra-state business should bear, and the percentage of the entire property of the company employed in its Virginia business, upon which the intra-state Virginia business should be required to yield a fair return, is the same percentage which the gross earnings of the intra-state Virginia business bears to the gross earnings from all the Virginia business. When it is considered that the intra-state and inter-state business of the roads are inextricably mingled, being carried on by the same employees, at the same time, with the same plant and instrumentalities, over the same parts of the road, often in the same train, and not infrequently in the same car—when these things are considered, it is believed that no more fair, just, reasonable and correct basis can be found upon which to apportion the common burden and earning requirements of the whole business between the inter-state and intra-state branches thereof, than the basis above indicated, to-wit, that of gross earnings; and the Commission,
626 from a long and painstaking study of the facts and conditions, is of the opinion that if this basis is unfair to either branch of the business it is to the intra-state branch.

With a view to the application of this principle of apportionment to some of the principal roads in Virginia, we take the following tables:

1. Norfolk & Western Railway Company.

Virginia.

Miles operated, 1,054.00 miles.	Year 1906. Per mile of road.
Freight revenue	$12,829 15
Other freight earnings	27 88
Total freight earnings	$12,857 03
Passenger revenue	$2,147 99
Other passenger earnings	408 41
Total passenger earnings	$2,556 40
Total gross earnings	15,413 43
Operating expenses:	
Maintenance of way and structures	$1,721 71
Maintenance of equipment	2,728 25
Conducting transportation	4,459 69
General expense	283 86
Total operating expenses	9,193 51

Net income from operation	6,219 92
Other income from operation	99 93
Total income from operation	$6,319 85
Taxes	440 17
Balance	5,879 68
627 Interest on bonds	1,649 29
Balance for stock	4,230 39
Dividends on stock	1,879 98
Surplus	$2,350 41

2. CHESAPEAKE & OHIO RAILWAY COMPANY.

Virginia.

Miles operated, 736.9 miles.	Year 1906.
	Per mile of road.
Freight revenue	$10,195 13
Total freight earnings	$10,195 13
Passenger revenue	2,344 56
Other passenger earnings	435 10
Total passenger earnings	$2,779 60
Total gross earnings	12,974 73
Operating expenses:	
Maintenance of way and structures	$1,373 35
Maintenance of equipment	2,338 09
Conducting transportation	3,899 57
General expenses	223 81
Total operating expenses	$7,834 82
Net income from operation	$5,139 91
Other income from operation	230 76
Total income from operation	$5,370 67
Taxes	437 34
Balance	$4,933 33
628 Interest on bonds	3,307 41
Balance for stock	$1,625 92
Dividends on stock	536 76
Surplus	$1,089 16

3. ATLANTIC COAST LINE RAILROAD COMPANY.

Virginia.

Miles operated, 137.54 miles.	Year 1906. Per mile of road.
Freight revenue	$11,968 96
Total freight earnings	11,968 96
Passenger revenue	2,544 74
Other passenger earnings	319 40
Total passenger earnings	$3,064 14
Total gross earnings	15,033 10
Operating expenses:	
Maintenance of way and structures	$2,161 00
Maintenance of equipment	1,966 64
Conducting transportation	5,651 09
General expenses	417 80
Total operating expenses	$10,196 53
Net income from operation	4,836 57
Other income from operation	623 08
Total income from operation	$5,459 65
Taxes	343 74
Balance	$5,115 91
629 Interest on bonds	1,009 71
Balance for stock	$4,106 20
Dividends on stock	646 59
Surplus	$3,459 61

4. SEABOARD AIR LINE RAILWAY.

Virginia.

Miles operated, 157.50.	Year 1906. Per mile of road.
Freight revenue	$8,670 70
Total freight earnings	8,670 70
Passenger revenue	1,238 88
Other passenger earnings	453 21
Total passenger earnings	$1,692 09
Total gross earnings	10,362 79

Operating expenses:

Maintenance of way and structures	$1,020 15
Maintenance of equipment	1,231 65
Conducting transportation	3,882 61
General expenses	207 41
Total operating expenses	$6,341 82
Net income from operation	4,020 97
Other income from operation	78 04
Total income from operation	$4,099 01
Taxes	380 68
Balance	$3,718 33
Interest on bonds	1,076 11
Balance for stock	$2,642 22
630 Dividends on stock	
Surplus	$2,642 22

5. SOUTHERN RAILWAY COMPANY.

In Virginia.

Miles operated, 965.53. Year 1906.

	Per mile of road.
Freight revenue	$4,246 10
Total freight earnings	4,246 10
Passenger revenue	2,503 50
Other passenger earnings	962 92
Total passenger earnings	$3,466 42
Total gross earnings	7,712 52

Operating expenses:

Maintenance of equipment	1,083 69
Maintenance of way and structures	$1,082 65
Conducting transportation	2,595 02
General expenses	248 06
Total operating expenses	$5,009 33
Net income from operation	2,703 19
Other income from operation	183 21
Total income from operation	$2,886 40

Taxes	236 64
Balance	$2,649 76
Interest on bonds	1,393 86
Balance for stock	$1,255 90
Dividends on stock	601 26
Surplus	$654 64

631 6. RICHMOND, FREDERICKSBURG AND POTOMAC RAILROAD COMPANY.

Miles operated, 83.20—all in Virginia. Year 1906.

	Per mile of road.
Freight revenue	$12,331 87
Total freight earnings	$12,331 87
Passenger revenue	6,953 07
Other passenger revenue	1,927 28
Total passenger earnings	$8,880 35
Total gross earnings	21,212 22
Operating expenses:	
Maintenance of way and structures	2,021 96
Maintenance of equipment	2,270 25
Conducting transportation	8,708 77
General expenses	560 28
Total operating expenses	$13,561 26
Net income from operation	$7,650 96
Other income from operation	
Total income from operation	$7,650 96
Taxes	10 86
Balance	$7,640 10
Interest on bonds	1,256 25
Balance for stock	6,383 85
Dividends on stock	3,171 16
Surplus	$3,212 69

632 7. WASHINGTON-SOUTHERN RAILWAY COMPANY.

In Virginia.

Miles operated, 33.83.	Year 1906.
	Per mile of road.
Freight revenue	$14,559 14
Total freight earnings	14,559 14
Passenger revenue	6,015 26
Other passenger earnings	2,502 54
Total passenger earnings	$8,517 80
Total gross earnings	23,076 94
Operating expenses:	
Maintenance of way and structures	$1,851 56
Maintenance of equipment	2,410 81
Conducting transportation	12,446 51
General expenses	547 27
Total operating expenses	$17,256 15
Net income from operation	5,820 79
Other income from operation	91 04
Total income from operation	$5,911 83
Taxes	524 34
Balance	5,387 49
Interest on bonds	4,456 24
Balance for stock	$931 25
Dividends on stock	2,177 21
Surplus	

633 8. NEW YORK, PHILADELPHIA & NORFOLK RAILROAD COMPANY.

In Virginia.

Miles operated in Virginia, 95.00.	Year 1906.
	Per mile of road.
Freight revenue	$13,227 28
Other freight earnings	193 44
Total freight earnings	$13,420 72

Passenger revenue	2,424 11
Other passenger earnings	978 28
Total passenger earnings	$3,402 39
Total gross earnings	16,823 11
Operating expenses:	
Maintenance of way and structures	$2,170 87
Maintenance of equipment	2,257 58
Conducting transportation	6,245 22
General expenses	657 49
Total operating expenses	$11,331 16
Net earnings from operation	$5,491 95
Other income from operation	13 65
Total income from operation	$5,505 60
Taxes	313 23
Balance	5,192 37
Interest on bonds	1,285 71
Balance	$3,906 66
Dividends on stock	1,964 28
Surplus	$1,942 38

634 From an inspection of these tables, it will be seen that the Norfolk and Western Railway Company shows gross earnings for the year ending June 30, 1906, on all its Virginia business, of $15,413.43 per mile, and net earnings on the same business of $5,879.68 per mile, all based upon the freight and passenger rates in effect during that fiscal year. From this it appears that the net income of this line is a little more than 5⅞ per cent. on a valuation of $100,000 per mile of its 1,054 miles of track located and operated in Virginia.

That the Chesapeake and Ohio Railway Company for the same year, figured on the same basis, shows gross earnings of $12,974.73 per mile, and net earnings of $4,933.33 per mile; giving a net income of approximately 5 per cent. on a valuation of $100,000 per mile on its 736 miles of track located and operated in Virginia, some 85 miles of which *is* mere trackage rights over the lines of the Southern and Washington Southern Railroad Companies from Orange to Washington.

That the Atlantic Coast Line Railroad Company, for the same year, figured on the same basis, shows gross earnings of $15,033.10 per mile, and net earnings of $5,115.91 per mile, giving a net income of approximately 5⅛ per cent. on a valuation of $100,000. per mile of its 137 miles of track located and operated in Virginia;

That the Seaboard Air Line Railway Company, for the same year, figured on the same basis, shows gross earnings of $10,362.79 per

mile, and net earnings of $3,718.33 per mile, giving a net income of approximately 3¾ per cent. on a valuation of $100,000. per mile of its 157 miles of track located and operated in Virginia;

The Southern Railway Company, for the same year, figured on the same basis, shows gross earnings of $7,712.52 per mile, and net earnings of $2,649.76 per mile, giving a net income of approximately 2⅝ per cent. on a valuation of $100,000. per mile on the 965 miles of track located and operated in Virginia; the expenses of some 75 miles of which, from Orange to Alexandria, are partly borne by the Chesapeake and Ohio Railway Company;

635 The Richmond, Fredericksburg and Potomac Railroad Company shows gross earnings of $21,212.22 per mile, and net earnings of $7,640.10 per mile, or approximately 7⅝ per cent. on $100,000. per mile of its 83 miles of track located and operated in Virginia;

That the Washington-Southern Railway Company shows gross earnings of $23,076.94 per mile, and net earnings of $5,387.49 per mile, or approximately 5⅜ per cent. on $100,000. per mile of its 36 miles of track located and operated in Virginia, after deducting a grossly exorbitant charge for its interstate traffic over the Potomac River bridge, which, as well as the Washington-Southern Railroad, is controlled by the Pennsylvania Railroad Company;

That the New York, Philadelphia and Norfolk Railroad Company shows gross earnings of $16,823.11 per mile, and net earnings of $5,192.37 per mile, or approximately 5 1-5 per cent. on $100,000. per mile, after making many unusual and unwarranted deductions from net income.

These amounts are based upon the companies' own figures, but in most, if not in all, cases it appears from the evidence that many thousands of dollars included by the roads in these operating expenses and other deductions from gross revenue in order to arrive at their net revenue as they report it, should not, for the purpose of this proceeding, have been deducted from the gross revenue. And the commission finds from the evidence, that, as a matter of fact, the net revenue of each road is more, and in some cases very considerably more, than that reported by them as given in the foregoing tables. In view, however, of the fact that even the roads' own reports of their respective net revenues amply justify the action of the commission in this proceeding, the commission does not deem it necessary in this paper, to discuss or point out the extent to which the real net revenues of the several roads is greater than they calculate and report it.

Assuming, for the moment and for the purpose of comparison, that 6 per cent. is an adequate net return on the value of the property of the roads above enumerated, it appears that this rate is

636 being earned by the several roads on the following valuations per mile respectively, stated in round figures:

Norfolk and Western Railway Company, 6 per cent. on $98,000. per mile.

Chesapeake and Ohio Railway Company, 6 per cent. on $82,000. per mile.

Atlantic Coast Line Railroad Company, 6 per cent. on $85,000. per mile.

Seaboard Air Line Railway Company, 6 per cent. on $62,000. per mile.,

Southern Railway Company, 6 per cent. on $45,000. per mile.

Richmond, Fredericksburg and Potomac Railroad Company, 6 per cent. on $127,000. per mile.

Washington-Southern Railway Company, 6 per cent. on $90,000. per mile.

New York, Philadelphia and Norfolk Railroad Company, 6 per cent. on $85,000. per mile.

It must be borne in mind that roadbed and track as shown in miles is not the only investment of these companies; to this chief item of costs must be added also the fair value of equipment, station buildings, freight depots, warehouses and terminals, and any other item of property which *are* necessarily incident to conducting a transportation business. It is difficult to ascertain the exact values of these last named items, but taking the assessed value of these items for taxable purposes in Virginia, as shown by the records of this commission, and distributing this value on a mileage basis, it is found that it only represents the sum of $3,797.78 per mile on the Southern Railway, which is the only road in the group, which is on an earning basis low enough to be possibly affected by this question.

Having shown by the above tables the net earnings per mile of the roads named respectively, on their entire Virginia business, and that no greater percentage of the company's plant is employed in earning a dollar of intra-state gross revenue than in earning a
637 dollar of interstate revenue, it follows that, if the net earnings of the companies from all their Virginia business, yield them a certain return upon a given valuation of their property employed in earning that revenue (as the figures just given show), then the net earnings upon the intra-state branch of that business must also yield the same return upon a similar valuation of the property employed in earning that intra-state revenue.

We now reach the question as to how far the net income of the several roads as above shown may be regarded as a fair and reasonable return upon a just and fair valuation of the property employed in earning it; and in order to answer this question, we must ascertain and determine what is a fair valuation of such property. Various bases have been suggested and considered by courts and rate making bodies for the ascertainment of the values of railroads and railroad properties.

The bond and stock basis has been suggested; but this is probably the most unreliable and untrustworthy of all measures of value of the property.

The cost of original construction has also been suggested; but this method is subject to various objections, among which is the consideration that the facts from which to determine original cost are usually too remote to be available. Even the cost of reproduction is not always a fair or reliable criterion, seeing that the market price of property, labor and material is a variable and constantly fluctu-

ating quantity; and even if it were not, yet, whether the basis should be the cost of reproduction of the property anew, or the cost of reproduction of the property in its present state, is a question of much difficulty and doubt.

Since the roads by their accounting methods, charge enormous sums annually to maintenance of roadway and structures, and to maintenance of equipment, the aggregate of which sums is annually deducted from the gross revenues in arriving at the reported income, and has been deducted in each case from the net incomes above given, it would seem that they have protected themselves and are continuing to protect themselves financially against the con-
638 sequences of natural depreciation of their property. The evidence shows that as to most, if not all, of the roads, even improvements and betterments were to a greater or lesser extent deducted also from the gross revenues before arriving at the reported income.

Under the laws of this State it was, for many years, the duty of the Board of Public Works, composed of the Governor, the Auditor of Public Accounts and the Treasurer of the Commonwealth, to assess for taxation the value of all railroad property in this State; for four years past this duty has developed upon this commission, which, in the performance thereof, has made careful personal inspections of all the railroad property in the State, and availed itself of every practical source of information as to the true value of that property, and have assessed it as the facts and circumstances of the case would, in their opinion, justify, with a view of deriving therefrom for the State the fair amount of taxes, to which, under the law, it was entitled. In these annual assessments, the interests of the State is naturally in the direction of increasing, while that of the railroad companies is equally in the direction of diminishing, the value of the railroad property, therefore, it would seem but reasonable to assume that the amount of such assessments should certainly not be regarded as unreasonably low, at least so far as the railroad companies are concerned.

The assessment of railroad property in Virginia under the old Board of Public Works was in no single instance more than $15,000.00 per mile, and, under this commission, has never been up to and including the year 1906 more than $16,000.00 per mile on single track roadway proper, and in many instances it is much less.

The Commission does not hold that the taxable value of railroad property and its commercial value is or should be the same, any more than in the case of any other property, but it is manifestly true that such values should bear some reasonable relation to each other, and that the assessed value of such property as ascertained year after year in this State and in many others, where conditions are
639 similar, and with reference to many different roads, should be considered and given due weight—not as alone determining, but—as an element and a very important element in determining the true commercial value of such property. Assessments may indeed be erroneous, but it is wholly improbable that when the

assessments made by States for the purpose of taxation are considered with reference to many different years, and for many different roads, it would be found that the State, for every year and every road, has made an error against itself and in favor of the road, and still more improbable would it be that the railroads had first discovered and pointed out the error.

One of the important duties of this Commission is to constantly inspect all the railroads of this State and to keep itself thoroughly posted with reference to the physical condition of the track, roadbed, structures and equipment of such property. This duty has been conscientiously and regularly performed by this body for a number of years. The necessary result of this has been to inform and keep informed this Commission of the condition and value of the railroad property of this State, as fully as any personal knowledge of property could enable one to judge of its value. This personal knowledge the Commission deems it right and proper that it should—not rely absolutely upon, but should—avail itself of in arriving at a fair and just estimate of the true commercial value of the property.

Few or no questions are more delicate or difficult of determination than the true commercial value of railroad property as a proper basis for rate fixing. Many persons have sought to evolve some simple and ready rule for making the estimate, and many different criteria have been suggested; but, in the opinion of this Commission, there is no single element or consideration which can be accepted as a safe or reliable guide, but that due weight and consideration must be given to many different ones.

The law as laid down by the courts requires the ascertainment of *some* value of the property as a basis upon which, as a matter of constitutional right, the company is entitled to earn a fair
640 return—in any event, at least so far as that can be done with reasonable rates. The law must contemplate then that there is some practicable method by which this value can be ascertained, and this Commission knows of no better, or more reliable method than to give due and proper consideration and weight to the following matters among others.

1st. The original cost of the property so far as it is shown.

2nd. The amount of the capital and bonded debt of the company applicable to the property in this State.

3rd. The market value of such stock and bonds.

4th. The cost of reproducing the property anew so far as it is shown.

5th. The cost of reproducing the property in its present condition so far as it is shown.

6th. The properly assessed value of the property for purposes of t-xation.

7th. The personal knowledge of the property by the Commission.

No one of these considerations should control, but due weight should be given to each. That some are entitled to much more weight than others is obvious, and that some are more easily ascertainable than others is equally obvious. For instance, the original cost of a railroad and its equipment is often absolutely unascertain-

able, and it is wholly impracticable to ascertain the cost of reproduction—either anew or in its present condition. Even if all of these matters were known, they could not safely be relied upon absolutely, because in many cases, particularly in this State, the property was acquired by the present owner at much less than its original cost or at which it could now be reproduced in any form.

Probably the most unreliable and misleading of all the foregoing considerations is the amount or present market value of the stock and bonds of the road. It is well-known that railroad stocks are rarely, if ever, issued for full value. In fact the general rule is that the money put into railroad property is wholly represented by its bonds, the stock being issued as a bonus and represents the
641 control, rather than the contribution to the property. Even when this is not fully true, it is impossible to tell to what extent it is true, especially when the present company, as is often the case, is the result of the merger, consolidation or re-organization of one or more corporations. Nor should the present market value of the stock at all be a controlling guide; because that value is constantly fluctuating, is readily and often manipulated, and depends much more upon the earning capacity of the road than upon the value of the property employed. It would, therefore, be but reasoning in a circle to fix the earning capacity by the value of the property employed, and then, in turn, ascertain that value by the earning capacity as reflected in the market value of the securities.

These are the considerations which have led the Commission to consider all the foregoing matters as well as everything else in the evidence tending to throw light upon the question, but to give varying weight to each consideration, their final judgment being a composite result of them all.

By this process, the Commission has arrived at the conclusion that the entire Virginia property of no railroad company assessed by it is really worth more than $50,000.00 per mile for the entire mileage in this State, while the property of most of such companies is worth less. The Southern Railway Company's entire property, composed as it is, largely of branch lines of cheap construction and not well maintained, on which is operated light and rather cheap class of equipment, is, in the opinion of the Commission, worth greatly less on its entire mileage in this State. The assessments of the property of the Southern Railway, made by the Commission for the year 1906, are as follows:

Roadway and track	$11,348.15 per mile.
All other property	3,797.78 per mile.
Total assessment of physical property	$15,145.93 per mile.

The Virginia revenue law provides for the payment an-
642 nually of a franchise tax at a rate of one per cent. on Virginia gross transportation receipts of the railroads. If we consider the amount of this franchise tax paid by the Southern Railway to the State, and capitalize it on the basis of $1.25 per $100.00 (estimated to be the minimum average rate of taxation in

Virginia, State, county and municipal, on property generally), we would have the additional sum of $5,708.45 per mile. Adding this sum to the assessed value of all the physical property above given, we have a total valuation of $20,854.38 per mile, reached upon a basis which puts the Southern Railway upon the same plane as other tax payers of the State. The Commission is clearly of opinion that the franchise tax should not be considered in this connection, and only includes it in the figures above given for the purpose of showing the outside valuation of the Southern Railway for taxable purposes from any standpoint from which the subject might be considered.

The Commission does not propose to fix for each road, or any of them, the *least* sum to which they could be restricted as a basis for earning capacity, without transgressing the constitutional limit of confiscation. As to how far this side of that limit the regulation should stop, is, in the opinion of the Commission, a matter of legislative discretion to be exercised by it as it deems wisest and best for the public welfare, not overlooking the fact that the railroads themselves and the holders of their securities are a part, and a very important part of that public.

In the exercise of this discretion, the Commission deems it the height of unwisdom and mistaken policy to restrict the railroad companies to the utmost point legally permissible or anywhere near that point. On the contrary, the Commission deems it manifestly wise and proper that the railroads, as one of the greatest engines of civilization and prosperity, on the successful operation of which practically every industry and every community is largely dependent, should be given every reasonable encouragement and dealt with as liberally as the public interests and the welfare of their patrons will permit.

643 The Commission, therefore, in its final action in these proceedings has been guided by these considerations and has decided upon the reduction in the maximum limit to passenger fares which it orders only after assuring itself, that, even if such reduction is not fully compensated by the consequential increase in business the roads will still be left, upon their intra-state Virginia business, such a margin of profit upon any fair value of the property employed as will enable their business to compare favorably in profitableness with any of the large, or standard, businesses of the country, and not even approach anywhere near the legal limit of confiscation.

But the Commission is convinced from the evidence in these proceedings, that this reduction in the maximum limit of passenger fares, when put into effect in good faith by the carriers, will not result in such a loss of revenue as would first appear from a consideration of the difference between the present maximum and the one proposed.

No branch of transportation is so responsive to lower fares as the carrying of passengers. Of course, there is a certain amount of travel which is compelled to move regardless of fares; but a very large amount of railroad traveling is the direct result of attractive rates which enable and encourage people to move about. None are better aware or more appreciative of this fact than the railroad com-

panies themselves, who, to encourage and increase this travel, have for many years voluntarily sold a large part of their transportation at very much less than the existing maximum limit of three cents a mile. In fact, the evidence shows that but a comparatively small part of the rates actually realized are as much as three cents, and that a very large part of them have long been from two cents a mile down. In States where a maximum limit has been established by law within the last one or two years, some roads have voluntarily withdrawn all their previously existing rates of less than two cents, thus cutting themselves off from the benefit of all the traffic for which these low rates were designed, and which moved only because of it.

These lower rates consisted for the most part of excursion
644 rates and special rates to fairs, conventions, and other public gatherings. It is perfectly obvious that the roads had heretofore granted these lower rates because of the plain business considerations that it was better to carry the people, for whom these fares were designed, at these low rates than not at all, and that this kind of passenger traffic only moved under and because of these low rates, in view of the fact that it was not obliged to move at all. These considerations are obvious just as applicable and controlling under a two-cent maximum as under a three-cent maximum, and therefore those roads which, for any reason, withdrew their former rates of less than two cents, did so voluntarily and not because the two cent limit required or forced them to it, and thus by their own act deprived themselves of that large and profitable part of their passenger traffic which only moves because of these low rates. Except when this was done, the evidence fails to show that any standard road has suffered any substantial diminution, but shows that some of them have derived a positive increase, of their passenger revenues under a two-cent maximum fare as compared with their revenues under a three-cent maximum fare.

After a careful study of the evidence and of the entire railroad situation in this State, the Commission believes, under the maximum limit of passenger fares as prescribed by it in this proceeding,

First. That the revenues of the railroad companies affected will not be necessarily diminished as compared with their existing revenues, but may be increased;

Second. That, if their revenues be in fact diminished thereby, they will not be sufficiently diminished to work any unjust or unreasonable deduction in their net earnings; and

Third. That since the effect of such maximum limit will not be to work a greater reduction in the companies' net earnings than they could be just and reasonably called upon to bear, such reasonable reduction should be applied as far as practicable, to such rates as are best able to bear it, and most generally affect public interest. Applying this principle to the evidence in the case, so far as
645 adduced, we reach the conclusion, and there is little, if any, evidence to the contrary, that it is proper to make the bulk of reduction in passenger fares, especially since such reduction will be more surely and readily compensated for by increased business, than if a similar reduction had been made in other classes of traffic. The increased passenger revenues which must necessarily result

from the withdrawal of free transportation under the operation of recently enacted laws, may be an item worthy of consideration in this connection.

So long as a company earns a satisfactory net profit from all of its intra-state business, taken in its entirety, it cannot legally or reasonably complain that more of this profit is earned out of one particular branch of that business than out of some other branch. As to which branch of intra-state business, or what particular item or items of transportation, should bear the heaviest, and which the lightest burdens, considered from the standpoint of public interest, is for the commission, and not for the railroad companies to decide, so long as the aggregate net revenue left to the companies is adequate, just and reasonable.

The commission is of opinion that a maximum rate of two cents per mile for the transportation of all intra-state passengers is not unreasonably low for the roads enumerated in the tables above given, numbered from 1 to 8, inclusive, considering the proportionate value of the property used by them in intra-state business and the character of service rendered to intra-state passengers. These roads will be specified by name in general schedule "A," hereinafter appearing. This conclusion is based upon the business of the roads, respectively, as shown by the evidence in this case, and by the operating reports for the years 1905 and 1906. It is true that the net earnings of the several railroads enumerated in this group are variable as to amount, and the presumption might arise that the roads showing the smaller earning power should not be classed with those showing the larger. We feel that this view is defeated by the fact that the larger earning roads, with one or two exceptions, are using property
646 of much greater value per mile than that used by the smaller earners. In view, however, of the fact that the net income per mile of the Southern Railway Company is small in comparison with the other roads in the same group, it is deemed reasonable to allow, and there will accordingly be allowed, a maximum rate of two and one-half cents per mile for intra-state passengers transported on the following divisions, or branches, of the said Southern Railway Company, viz:

Norfolk Division, extending from Pinner's Point to Danville, 204 miles;

Franklin Branch, extending from Franklin Junction to Rocky Mount, 37 miles;

Claremont Branch, extending from James River Junction to Claremont, 50 miles.

So that the two and one-half cent rate will apply to 291 miles, or 30 per cent. of Virginia mileage of the Southern Railway Company.

From a careful consideration of the evidence in this case, and of the operating reports of the Virginia and Southwestern Railway Company, and Louisville and Nashville Railroad Company, we feel constrained to include, and accordingly will include them in the group of roads which are limited to a maximum passenger rate of two cents per mile. The operating reports of these two roads, on their face, might not seem to justify this reduction; but the facts

appearing on cross examination relative to the method of accounting in use by these two roads fully justify a reduction of their passenger rates to two cents per mile, and they will so appear in general schedule "A."

The commission is further of opinion that a maximum passenger rate of three cents per mile should be observed as to intra-state passengers by the Winchester and Potomac Railroad Company, Winchester and Strasburg Railroad Company, and the Valley Railroad Company of Virginia. It having appeared in the evidence that a mileage book is sold by the Baltimore and Ohio Railroad Company at a rate of two cents per mile, available on these three roads, it is thought that this voluntary reduction, taken in connection
.647 with the slight one herein made, is as much as the financial showing of these roads will justify at present. These roads appear in general schedule "B." In this connection it might be proper to state the net income of these three roads from all sources for the year ending June 30, 1906, as shown by the operating reports on file in this office, are:

Valley Railroad Company of Virginia, 6 per cent. on a valuation of $14,000 per mile.

Winchester and Potomac Railroad Company, 6 per cent. on a valuation of $17,500 per mile;

Winchester and Strasburg Railroad Company shows a deficit after paying operating expenses.

If we treat these three lines as a part of the Baltimore and Ohio System, and consolidate their earnings, we find that under the maximum passenger rate of three and one-fourth cents now in effect on these roads, the Baltimore and Ohio net earnings from all Virginia business, inter- and intra-state, is on a basis of 6 per cent. on less than $14,000 per mile. The fact that the Baltimore and Ohio Railroad Company is a large and powerful system in other States, would not seem to affect the question before us, at least from the standpoint of the legal limitations of the rate-making power of Virginia.

These statements are not regarded by the commission as fairly representing the earnings of these roads, but, even when properly analyzed, are not such as to justify further reduction at present.

The commission is further of opinion that a maximum passenger rate of three cents per mile should be observed as to intra-state passengers by the Norfolk and Southern Railway Company, and the Virginia and Carolina Coast Railroad Company, now operated by said Norfolk and Southern Railway Company. The net income of the Norfolk and Southern Railway Company from all sources for year ending June 30, 1906, as shown by its operating report on file in this office, is $805.85 per mile, which is on a basis of 6 per cent. on a valuation of about $13,000 per mile. The net income of the Vir-
ginia and Carolina Coast Railroad for the same year is very
648 much less. Under these conditions the commission does not feel warranted in reducing the maximum rate on these two roads below three cents per mile. These roads also appear in general schedule "B."

The commission is further of opinion that a maximum passenger rate of three cents per mile should be observed as to intra-state pas-

sengers on all roads embraced in general schedule "B," and that a maximum passenger rate of three and one-half cents per mile should be observed as to intra-state passengers on all independent narrow-gauge steam roads, and on all independent broad-gauge roads less than ten miles in length. These roads appear in general schedule "C."

General Schedule Showing Rates of Passenger Fares for the Several Steam Roads Operating in Virginia, as Ordered by the State Corporation Commission.

SCHEDULE A.—(2 CENTS PER MILE.)

Norfolk and Western Railway Company,
Chesapeake and Ohio Railway Company,
Atlantic Coast Line Railroad Company,
Seaboard Air Line Railway,
Southern Railway Company,
Richmond, Fredericksburg and Potomac Railroad Company,
Washington-Southern Railway Company,
New York, Philadelphia and Norfolk Railroad Company,
Virginia and Southwestern Railway Company,
Louisville and Nashville Railroad Company.

Except that a maximum rate of two and one-half cents per mile will apply on the following divisions or branches of the Southern Railway Company:

Norfolk Division, extending from Pinner's Point to Dan-
649 ville, 204 miles, exclusive of so much of the said division as may be in the State of North Carolina.

Franklin Branch, extending from Franklin Junction to Rocky Mount, 37 miles.

Claremont Branch, extending from James River Junction to Claremont, 50 miles.

SCHEDULE B.—(3 CENTS PER MILE.)

Chesapeake-Western Railway.
Cumberland Valley and Martinsburg Railroad Company,
Danville and Western Railway Company,
Indian Creek and Pound River Railroad Company,
Marion and Rye Valley Railway Company,
Nelson and Albemarle Railway Company,
Valley Railroad Company of Virginia,
Virginia-Carolina Railway Company,
Virginia Southern Railroad Company,
Winchester and Potomac Railroad Company,
Winchester and Strasburg Railroad Company,
Norfolk and Southern Railway Company.

SCHEDULE C.—(3 1-2 CENTS PER MILE.)

Big Sandy and Cumberland Railroad Company,
Big Stone Gap and Powell's Valley Railway Company,
Black Mountain Railway Company,
Interstate Railroad Company,
Lick Creek and Lake Erie Railroad Company,
Mt. Airy and Eastern Railway Company,
New River, Holston and Western Railroad Company,
Potomac, Fredericksburg and Piedmont Railroad Company,
Surry, Sussex and Southampton Railway Company,
Tidewater and Western Railroad Company,
Virginia Anthracite Coal and Railway Company,
Virginia and Kentucky Railway Company,
Wise Terminal Company.

650 It has been urged by the carriers that the prices of material and labor have greatly increased during the period of this investigation, and are continuing to increase since the evidence in the case was taken. Examination shows, however, that, in practically all cases, the gross earnings of the roads are also increasing, and that the most that can be said as to this claim, when properly analyzed, is that the profits on increased gross earnings are being absorbed by increased charges for labor and material, though the commission is not prepared to find that even this is wholly true. In the case of some of the roads, such for instance as the Southern, it is found that they are failing to accept and carry much of the intra-state Virginia traffic originating on their lines, or tendered to them by connecting lines, and which is now making urgent demand upon them for transportation. This failure to transport traffic tendered, and naturally tributary to them, is not found to exist on those roads which are conducting the largest amount of business, but on the roads which are handling along their tracks, a volume of traffic below the average. It would appear from the evidence that if many of the roads which complain of lack of revenue would utilize fully, as they should, the improved facilities now owned by them, both of power and equipment, in the transportation of traffic already offered to them, the profit arising from increased business would soon take care of any increase in the cost of material and labor.

The State of Virginia and the whole South is throbbing with energy and enterprise, and teeming with traffic as never before. The field of opportunity for railroad companies has widened and continues to widen beyond the most sanguine expectations of their official heads, and admittedly far beyond their present state of preparedness. We have shown that the net profit arising from the handling of this greatly increased and increasing traffic, even under the reduction herein ordered, will be equal to, if not greater than that enjoyed by other standard and legitimate business in the country. It is inconceivable that the carriers should, under these conditions,

651 find themselves unable to command the financial credit necessary to the performance of their public duties, and to the provision of such increased facilities in the nature of track,

terminals and equipment, as may be necessary to keep pace with the expansion of traffic, of which they are to become the beneficiaries.

VIRGINIA, *City of Richmond, To-wit:*

We, R. R. Prentis and R. T. Wilson, Chairman, and Clerk, respectively, of the State Corporation Commission of Virginia, do hereby certify that the foregoing is a full, complete and true copy of the written opinion of the said Commission which is referred to in the last order contained in the foregoing transcript of record, and which opinion, by said order, is made a part of the record of the proceeding in which said order was entered.

In testimony whereof, we have hereunto set our hands, and affixed the seal of the said State Corporation Commission, this the 25th day of June, 1907.

[Seal of the State Corporation Commission of Virginia.]

ROBERT R. PRENTIS,
Chairman.
R. T. WILSON, *Clerk.*

This day R. T. Wilson, Clerk of the State Corporation Commission of Virginia, to me personally known, appeared in person before me, the undersigned, a Notary Public in and for the City of
652 Richmond, in the State of Virginia, and, before me, in my said city, subscribed and made oath to the foregoing certificate.

In testimony whereof I have hereunto set my hand and affixed my official seal this, the 25th day of June, 1907.

[NOTARIAL SEAL.] JNO. S. EGGLESTON,
Notary Public.

653 *Decree Directing Coupons to Issue to Purchasers of Tickets, &c., and Continuing Restraining Order Awarded May 15th,* 1907.

Entered and Filed June 29th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, Complainant,
versus
BEVERLEY T. CRUMP and Others, Defendants.

This cause came on this day to be heard on the papers formerly read and on the application of the complainant herein, in accordance with the sixth section of the order entered herein on May 15, 1907, and it being impossible for the court to determine the motion for an injunction *pendente lite* until after the 1st day of July, 1907, the date fixed in the order of the State Corporation Commission of

Virginia for the rates thereby prescribed to go into effect; to the end that the rights of no one shall be put in jeopardy but that proper arrangements shall be made and orders entered whereby the legal status of all parties affected by this litigation shall be preserved, the court doth Adjudge, Order and Degree that the complainant, on the 1st day of July, 1907, or if that be impossible, then as soon thereafter as practicable, give to any person who travels between
654 points on its line in the State of Virginia at a rate exceeding two cents per mile, a coupon substantially in the following form, to-wit:

"The Chesapeake and Ohio Railway Company.

Virginia Ticket Claim Coupon.

To be retained by passenger.

Not good for passage.

—— to ——.

Issued under an order of the United States Circuit Court for the Eastern District of Virginia, in a suit in equity, No. 579, therein pending, between The Chesapeake and Ohio Railway Company and Beverley T. Crump, *et al.*"

and that said coupon shall be of such form and number as that from it, in connection with the ticket or other evidence of transportation to which it corresponds, may be ascertained the sum to which such person shall be entitled in the event that the order entered by the State Corporation Commission of Virginia on the 27th day of April, 1907, is in this cause finally upheld as a valid and binding order.

And the court doth further Adjudge, Order and Decree that the restraining order heretofore awarded in this cause on the 15th day of May, 1907, be and the same is hereby continued until the further order of this court.

J. C. PRITCHARD,
U. S. Circuit Judge.

June 29th, 1907.

655 *Special and Limited Appearance for Defendants.*

Filed July Rules, Monday, July 1st, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, Complainant,
versus
BEVERLEY T. CRUMP, HENRY C. STUART, and JOSEPH E. WILLARD, Individually and as Constituting the State Corporation Commission of Virginia, and R. T. WILSON, Clerk of the State Corporation Commission of Virginia, Defendants.

Special and Limited Appearance at Rules for Defendants on the First Monday in the Month of July, 1907.

We, the undersigned attorneys-at-law, hereby appear for, and on behalf of, the defendants in the above named cause, for the purpose of objecting to the jurisdiction of this court to entertain the said cause, or to make any order therein, against the said defendants, or any of them, and for that purpose alone, this appearance is limited, and is made specially and solely for the purpose of objecting to the jurisdiction of the Court, in said cause, and for no other purpose whatsoever.

WILLIAM A. ANDERSON,
A. CAPERTON BRAXTON,
Solicitors and Counsel for said Defendants.

656 *Affidavit of L. F. Sullivan, Comptroller of the Chesapeake and Ohio Railway Company, on Behalf of Complainant.*

Filed July 1st, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, Complainant,
versus
BEVERLEY T. CRUMP and Others, Defendants.

L. F. Sullivan, being first duly sworn, deposes and says: That he is the Comptroller of The Chesapeake and Ohio Railway Company, and as such, has charge of the accounts and books, reports of conductors and ticket agents, and cancelled tickets, etc., of the Company; that he has occupied that position since November 15, 1897; that he has had about thirty-four or thirty-five years' experience in railroad business; that he began his railroad service in March, 1872, at Indianapolis, Indiana, in the freight station of what was known then as the Indianapolis, Cincinnati and Lafayette Railroad, now

commonly known as the Big Four; that he remained there until 1880, occupying various clerical positions, including the position of Chief Clerk; that in September, 1880, he was appointed freight and ticket agent of the same Company at Sheldon, Illinois, and remained there until November, 1881, when he was appointed freight and ticket agent of the same Company at Kankakee,
657 Illinois, and remained there until June, 1882; that in June, 1882, he was appointed Paymaster and Traveling Auditor, with headquarters at Cincinnati, and occupied that dual position until 1888; that in April, 1888, he was made Freight and Ticket Accountant of the same Company, and remained in that position until July 1, 1889, when he was made Auditor of The Chesapeake and Ohio Railway Company, and on November 15, 1897, was made Comptroller, which position he still occupies; that his various positions above set forth enables him to say that it is impossible for a conductor of a passenger train, or a ticket agent selling tickets, to ascertain from each intrastate passenger his name and address, and the distance travelled, and report the same to the Comptroller's office so that any correct report, showing the names and addresses of the persons to whom should be made a refund for charges made in excess of two cents per mile; that he has read the affidavits of C. W. Morriss and J. H. Michie, and that the facts set out in those affidavits are correct, and that he knows from his experience the difficulties and the practical impossibility of ascertaining the names and addresses, and the distance travelled, of intrastate passengers, and making any correct report thereof by conductors and ticket agents.

L. F. SULLIVAN.

Subscribed and sworn to before me this 21st day of June, 1907.

C. C. MICHIE,
Notary Public.

My commission expires Dec. 4th, 1910.

658 *Affidavit of J. H. Michie, Passenger Conductor of the Chesapeake and Ohio Railway Company, on Behalf of Complainant.*

Filed July 1st, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, Complainant,
versus
BEVERLEY T. CRUMP and Others, Defendants.

The undersigned, being first duly sworn, deposes and says: That he is a passenger conductor in the employ of The Chesapeake and Ohio Railway Company; that he has been such passenger conductor for 29 years, having before that discharged the duties of brakeman and freight conductor; that from his knowledge, obtained as such

passenger conductor in the handling of passengers and tickets, affiant says that it is not possible for a conductor of a train in the discharge of his various duties to obtain the names and addresses of passengers paying cash fares or traveling on tickets between points in the State of Virginia; that to undertake to do this would so delay the conductor in the "working of his train" as to result in carrying many passengers past their stations and in failing to collect fares from many other passengers, and would so occupy the time and attention of the conductor as to seriously embarrass him in the safe handling of the train, and might endanger the safety of the
659 passengers entrusted to his care; that to make a record of the names and addresses of such passengers would be practically impossible, and that any such record attempted to be made under the circumstances which exist upon a passenger train at the time that the conductor is collecting his tickets and fares would be worthless as a basis on which any report verified by oath could be made; that many persons would refuse to give their names and addresses; that many other persons would regard it as a piece of impertinence on part of the conductor to ask any such question, and would give rise to unpleasant comments from passengers which would be hard for a conductor to endure; that no reliable report could be furnished by the conductor to the comptroller of the names and addresses of such intrastate passengers; that in addition to the names and addresses such record would have to show the points between which each passenger traveled, which would be another complication.

For the foregoing reasons, and from his own experience, affiant says that it would be practically impossible to ascertain the names and addresses of intrastate passengers and furnish a report thereof which could be verified by oath.

J. H. MICHIE.

Subscribed and sworn to before me this 21st day of June, 1907.

C. C. MICHIE,
Notary Public.

My commission expires Dec. 4th, 1910.

660 *Affidavit of C. W. Morriss, Ticket Agent of the Chesapeake and Ohio Railway Company, on Behalf of Complainant.*

Filed July 1st, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, Complainant,
versus
BEVERLEY T. CRUMP and Others, Defendants.

The undersigned, C. W. Morriss, having been duly sworn, deposes and says: That he is the Ticket Agent of The Chesapeake and Ohio Railway Company at its passenger station in the City of Rich-

mond; that he has been Ticket Agent for The Chesapeake and Ohio Railway Company and for other roads in the State of Virginia; that he is also Ticket Agent for the Seaboard Air Line Railway Company and Richmond, Fredericksburg and Potomac Railroad Company; that he has been an agent engaged in the sale of tickets for about eighteen years; that his experience in this business has been such that he can say with perfect safety that three fourths of the tickets that are sold at stations are sold within fifteen to twenty minutes prior to the departure of trains; that it would be absolutely impossible for a Ticket Agent, in addition to the duties that necessarily have to be performed in the sale of tickets, to stop passengers going from one point to another in the State of Virginia and obtain from them their names and addresses; that such a proceed-
661 ing would result in so delaying the line of passengers applying for tickets as would create great irritation amongst them; that passengers so delayed would be fearful of missing their trains; that no train could be gotten off on schedule time without leaving many of the passengers, and probably many passengers going to points other than those in the State of Virginia; that in the hurry of attempting to do such a thing no reliable record could be made; that even to attempt to do it would require many persons to be engaged at the same time in selling tickets for the same train; that the records so made under such circumstances as this and transmitted to the Comptroller's office would be of such a character that the Comptroller could not make up therefrom reports which he could safely verify by oath as being correct, nor could a Ticket Agent safely verify by oath any report based on his record made under such unfavorable circumstances and conditions as would arise were the attempt made to demand from each passenger intrastate in Virginia his name and address; that from his experience in dealing with passengers he is satisfied that a very large number of passengers would not only refuse to give their names and addresses but would regard it as an unwarranted interference on the part of the ticket seller and would resent any such inquiry. Many passengers would demand that the ticket seller should stop and explain to them the reason for any such apparently impertinent inquiry. These difficulties will be greatly enhanced when a ticket seller comes to sell tickets to women and children.

For the foregoing reasons this affiant, from his experience, says that to undertake to make a report verified by oath of the names and addresses of persons to whom tickets are sold for intrastate passenger travel in Virginia would be practically impossible.

C. W. MORRISS.

Subscribed and sworn to before me. Given under my hand this 21st day of June, 1907.

C. C. MICHIE.

My Commission expires Dec. 4th, 1910.

662 *Agreement of Counsel.*

Filed July 1st, 1907.

In Equity.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, Complainant,
versus
BEVERLEY T. CRUMP and Others, Defendants.

It is agreed that, if the court should hold that it has jurisdiction of this cause, then it need not go into the question of the merits upon the hearing of this rule, but may thereupon grant the preliminary injunction referred to in the rule and refer the cause to a Master; provided that the sole purpose and effect of this stipulation is and shall be that the granting of such preliminary injunction and the referring of the cause to a Master without further affidavits or testimony on the merits on the part of the Complainants shall not be assigned or treated as error; all other rights and remedies whatsoever of the defendants shall remain unaffected, and particularly shall they not be considered as or regarded as having made any concession upon the question of the jurisdiction of this court or the conclusiveness as a matter of law of the action or order of the Virginia State Corporation Commission in the premises, all questions on the merits being reserved for a hearing before the Master and before the Court on final hearing—the concession made herein by the defendants as to the granting of the interlocutory injunction is not to be used against them on any question of fact, or legal presumption as to fact, either before the Master or before the Court on the final hearing on the merits.

663 *Memorandum of the Court.*

Filed July 10th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, Complainant,
versus
BEVERLEY T. CRUMP and Others, Defendants.

I fully appreciate the fact that the questions involved in this controversy are serious in their character and require the closest scrutiny in order that a proper conclusion may be reached in determining the same.

It is always a source of regret to me to be called upon to determine the validity of an Act of a legislative or other body representing a sovereign State, and in this instance, it is especially so, entertaining as I do, the profoundest respect for the State of Virginia and her

institutions. This is also true of North Carolina, where I have been recently called upon to decide questions similar to those involved in this proceeding, and applies with equal force to any of the States of the Union. However, I am called upon to *pre*form a solemn duty and the obligation which rests upon me to determine the questions involved in this cause in accordance with the provisions of the Constitution of the United States is imperative. It is not my purpose to attribute any unworthy motives to those who framed the provisions of the constitution authorizing the creation of the Corpo-
664 ration Commission of Virginia. I am satisfied that those who were instrumental in securing the adoption of such provisions were honestly endeavoring to devise some means by which there could be a proper ascertainment of rates to be charged by railroads and other public corporations, yet in determining the questions presented for my consideration it becomes my duty to ascertain, if possible, the effect of the constitutional provisions in question. The courts cannot consider motives nor public policy in dealing with questions of this character, but must be *guide* solely in construing the same by the limitations imposed by the constitution of the United States. The power and duty of the courts of the United States to afford to individuals protection for their constitutional rights in respect to property even as against persons claiming under authority of the United States itself have repeatedly been recognized by the Supreme Court of the United States. A notable case being the one where the descendants of General Robert E. Lee instituted suit against officers of the United States for the possession of Arlington and the Circuit Court of the United States for the Eastern District of Virginia afforded relief to the constitutional rights of these descendants of General Lee for the possession of that property, and this decision of the Circuit Court was affirmed by the Supreme Court of the United States in the case of the United States *vs.* Lee 106 U. S. 196. The decision of the Circuit Court in this case is reported under the title of the Arlington case, 3rd Hughes 36.

The complainant in this cause seeks to enjoin the enforcement of certain passenger rates recently adopted by the State Corporation Commission of the State of Virginia. It insists that its present rates in the State of Virginia are not higher than a reasonable compensation for the services rendered by it to travellers on its lines, and are in no sense excessive or exorbitant; that they are not un-
665 justly, unduly, unreasonable or illegally discriminatory between individuals, nor as between localities and that they in no way violate the law. It also insists that it has as an incident of its property, and as a property right, the right to charge for each service it renders a reasonable compensation, and that it is protected by the Fourteenth Amendment to the Constitution of the United States in making, receiving and collecting such charge. It is also insisted that the effect of the proposed rates would be to materially diminish its charges and reduce the same greatly below what would be reasonable and just compensation for the respective services rendered to the patrons of its lines. It is contended that to prevent it from charging a reasonable compensation for the services rendered to the travelling

public would be to deprive it of its property without just compensation and without due process of law.

It is likewise insisted by the complainant that if the order of the State Corporation Commission of Virginia prescribing and fixing rates should be permitted to go into effect it would subject it to the danger of a multitude of suits based on such order and to prosecutions for penalties in enormous amounts.

Among other things complainant prays for an injunction against Beverley T. Crump, Henry C. Stuart, Joseph E. Willard, individually, and as constituting the State Corporation Commission of Virginia, and R. T. Wilson, Clerk of the State Corporation Commission during the pendency of this suit.

On May 15, 1907, an order was entered restraining the defendants from enforcing the provisions of the aforesaid Act, and at the same time, notice was issued to the defendants to appear before me on the 27th day of June 1907, and show cause why the injunction
666 should not be continued until the final hearing.

The defendants file an answer in which they say that the rates fixed by the State Corporation Commission are not confiscatory. However, when the motion came on for hearing counsel representing complainant and defendants signed an agreed statement of facts, as to that part of the bill which charges that the rates are confiscatory. The part of the agreement which is essential to the determination of the questions now before the court, reads as follows:

"It is agreed that, if the court should hold that it has jurisdiction of this cause, then it need not go into the question of the merits upon the hearing of this rule but may thereupon grant the preliminary injunction referred to in the rule and refer the cause to a master. * * *."

In view of the foregoing agreement the only question left for consideration is whether this court has jurisdiction of the questions involved.

It is insisted by counsel for the defendants that the State Corporation Commission of Virginia is a court within the meaning and intent of the provision of Section 720 of the Revised Statutes of the United States, which reads as follows:

"The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

I have heard with much pleasure the unusually able and interesting arguments of counsel representing complainant and defendants, and have given the questions presented much consideration, and in this connection, will say that, I have never had presented to me a question which has caused me greater concern than the one involved in this hearing.

Section 720 of the Revised Statutes is plain and explicit and cannot be misinterpreted, but I am forced to the conclusion that it does not apply in this instance.

It is true that the Court of Appeals of Virginia has held
667 that the Corporation Commission of Virginia possesses judicial, executive and legislative functions. Nevertheless I am of

opinion that in fixing the rates involved in this controversy the Corporation Commission was exercising a legislative function, and therefore was not acting as a court within the meaning of Sec. 720 of the Revised Statutes, and its acts in attempting to put in force the rates thus established are administrative. Under these circumstances, this court has jurisdiction to restrain the defendants from publishing and enforcing the rates which have heretofore been prescribed and established by said Commission. The acts sought to be restrained being purely ministerial in their character, the complainant seeks to assert a right which is guaranteed by the Constitution of the United States and it thereby becomes the duty of the court to entertain jurisdiction in order that the reasonableness of such rates may be judicially determined.

It is not necessary, at this time, to pass upon the validity of the provision of the Constitution of Virginia which created the State Corporation Commission; that is a question which the court reserves until the final hearing of this cause.

For the reasons herein stated the restraining order heretofore granted will be continued until the final hearing.

In conclusion, I will say that it is a source of gratification to me to know that my decision in respect to this question is not final, but that it is to be ultimately submitted to the Supreme Court of the United States for determination, and if I have committed error that distinguished tribunal will correct the same.

668 I will prepare an opinion at an early date in which I will discuss more fully my views in regard to the matters in controversy.

Decree Granting Interlocutory Injunction.

Entered and filed July 10th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

Before Honorable J. C. Pritchard, Judge of said Court.

In pursuance of the order to shew cause made herein on the 15th day of May, 1907, by which the said defendants were ordered to appear before this Court in the United States Court Room at Asheville, N. C., at Ten o'clock a. m. on Thursday the 27th day of June, 1907, to show cause if any they had or could show why an injunction *pendente lite* as prayed in the bill should not be issued, said defendants appeared by counsel and by consent of defendants through their counsel and of the complainant through its counsel the fourth paragraph of the order herein of May 15th, 1907, was amended so as to require the defendants and each of them to show

cause before a Judge of this Court (instead of before this
669 Court) in the United States Court Room at Asheville, North Carolina, on the date mentioned;

And thereupon the defendants filed their answer in writing objecting to the jurisdiction of this Court in the premises and by a like consent Robert R. Prentis was substituted as one of the defendants in this cause in the place of the defendant Beverley T. Crump, said Robert R. Prentis having since the institution of this suit, succeeded the said Beverley T. Crump as a member and as Chairman of the State Corporation Commission of Virginia and it was stipulated at the bar of this court between counsel for the complainant and counsel for the defendants as follows;

"It is agreed that, if the court should hold that it has jurisdiction of this cause, then it need not go into the question of the merits upon the hearing of this rule, but may thereupon grant the preliminary injunction referred to in the rule, and refer the cause to a Master; provided that the sole purpose and effect of this stipulation is, and shall be, that the granting of such preliminary injunction, and the referring of the cause to a Master, without further affidavits or testimony on the merits on the part of the complainants shall not be assigned or treated as error; all other rights and remedies whatsoever of the defendants shall remain unaffected, and particularly shall they not be considered as, or regarded as, having made any concession upon the question of the jurisdiction of this court or the conclusivensss as a matter of law of the action or order of the Virginia State Corporation Commission in the premises, all questions on the merits being reserved for a hearing before the Master and before the Court on final hearing—the concession made herein by the defendants as to the granting of the interlocutory injunction is not to be used against them on any question of fact, or legal presumption as to fact, either before the Master or before the Court on the final hearing on the merits."

And thereupon the motion of the Complainant for an interlocutory injunction, as prayed in the bill, coming on to be heard before the judge of this court, and the said motion having been heard upon the bill of complaint in this cause, treated as an affidavit, upon the answer thereto of the defendants objecting to the jurisdiction of the court, upon said stipulation of counsel, and upon the affidavits filed herein by the complainant, and the said motion having
670 been argued by counsel, and having been fully considered, it is now ordered:

1. That, until the further order of the Court herein, the defendants Robert R. Prentis, Henry C. Stuart, and Joseph E. Willard, individually and as constituting the State Corporation Commission of Virginia, and each and all of their successors in office, their and each of their servants, agents and employees, be, and they hereby are, restrained and enjoined from publishing, or having published, in any newspaper published in the City of Richmond, Virginia, the general order of the State Corporation Commission of Virginia, bearing date the 27th day of April, 1907, in respect to passenger rates, in the bill in this cause mentioned, and from taking any other step or steps whatsoever under the Constitution or laws

of Virginia, or otherwise, to enforce the requirements of said order.

2. That, until the further order of the Court herein, the defendant, Richard T. Wilson, Clerk of the State Corporation Commission of Virginia, his successors in office, and his servants, agents and employees, be, and they hereby are, restrained and enjoined from publishing, or having published, said order of the State Corporation Commission of Virginia in any newspaper published in the City of Richmond.

3. That until the further order of the Court herein that the defendant the Times-Dispatch Company or any Agent of such Times-Dispatch Company or any other newspaper and the owner, proprietor or manager and the agent of any such owner, proprietor, or manager of any such other newspaper published in the City of Richmond and they and each and every one of them are enjoined and restrained from publishing or having published under the direction of the State Corporation Commission of Virginia or of the Clerk thereof said order of said State Corporation Commission of Virginia entered on the 27th day of April, 1907.

671 4. That until the further order of the Court herein the owners, proprietors, or managers of any newspaper published in the city of Richmond, Virginia, be, and each and every one of them is, hereby restrained and enjoined from publishing, or having published, under the direction of the State Corporation Commission of Virginia or the Clerk thereof, such order of the State Corporation Commission of Virginia.

5. That said complainant or some one for it shall before a Judge of this Court, or the Clerk thereof, execute a bond in the penalty of one hundred and sixty thousand dollars, with surety to be approved by such Judge, or by such Clerk, conditioned to pay into the registry of this court, from time to time, when and as the Court may so order, such sum or sums of money as shall be equal to the difference between the aggregate passenger rates charged and received by it for intrastate service on its lines in the State of Virginia, and what would have been the aggregate amount for such service, at the rates fixed in said order of the State Corporation Commission of Virginia of April 27th, 1907 and further conditioned that whereas an interlocutory injunction has been issued in this cause, by the terms of which the defendants, and each of them, are restrained until the further order of this Court, as from said order will appear, should the said interlocutory injunction be dissolved or vacated as having been wrongfully issued, or because the said acts were improperly restrained, then that the complainant should pay, or cause to be paid, all damages caused by the issue of such interlocutory injunction, and the costs in this cause in connection therewith.

6. That the complainant shall give to any person who travels between points on its line in the State of Virginia at a rate ex-

672 ceeding two cents per mile coupons substantially in the following form, to-wit:

"The Chesapeake and Ohio Railway Company.

Virginia Ticket Claim Coupon.

To be retained by passenger.

Not good for passage.

—— to ——.

Issued under an order of the United States Circuit Court for the Eastern District of Virginia, in a suit in equity, No. 579, therein pending, between The Chesapeake and Ohio Railway Company and Beverley T. Crump, *et al.*"

and that said coupon shall be of such form and number as that from it, in connection with the ticket or other evidence of transportation to which it corresponds, may be ascertained the sum to which such person shall be entitled in the event that the order entered by the State Corporation Commission of Virginia on the 27th day of April, 1907, is in this cause finally upheld as a valid and binding order.

7. That the complainant herein shall preserve and produce, whenever so ordered by the Court, all cancelled tickets or other evidence of transportation in respect to which coupons as provided for in the order entered herein June 29, 1907, may be outstanding, and shall, from time to time, as required by order of the court so to do, report to the Court statements showing the revenue by it charged and collected for the intrastate transportation of passengers in the State of Virginia, in excess of the amount permitted by said order of the State Corporation Commission of Virginia of April 27th, 1907, and the complainant shall, from time to time, give such further bond or bonds as the Court may require, to secure proper payment into the registry of the Court of all the amounts which finally shall be adjudged that it should so pay under the final decision in this cause.

8. That if it shall be determined herein that the complainant is entitled to the amounts covered by said bond or bonds then said bond or bonds shall be released and canceled by the court and if any amount shall have then been paid into the registry of the
673 court pursuant to the orders of this court, that then upon such determination in favor of the complainant the sum or sums so paid into the registry shall be repaid to the complainant without further order of the court herein.

9. That the restraining order heretofore entered in this cause shall be continued and remain in full force and effect until this interlocutory injunction shall take effect.

10. It is further ordered that a writ of injunction shall forthwith issue in accordance with this order.

11. And thereupon the complainant tendered its bond to comply with the provisions in respect to a bond in this order duly executed by the complainant as principal and by the United States Fidelity and Guaranty Company of Baltimore, Maryland as surety, which said bond and execution thereof and surety thereon are hereby approved.

July 10th, 1907.

J. C. PRITCHARD,
U. S. Circuit Judge.

674 *Injunction Bond.*

Filed July 10th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

Know all men by these presents, that The Chesapeake and Ohio Railway Company, a corporation of the State of Virginia, the principal office of which is in the city of Richmond in said State, as principal, and the United States Fidelity and Guaranty Company of Baltimore, Maryland, as surety, are held and firmly bound unto the United States of America in the just and full sum of One Hundred and Sixty Thousand ($160,000.) dollars, for the payment of which well and truly to be made we do hereby jointly and severally bind ourselves, and each of our successors, firmly by these presents.

The condition of this obligation is such that if the said The Chesapeake and Ohio Railway Company shall pay into the registry of the Circuit Court of the United States for the Eastern District of Virginia, upon the order of said Court, in the above mentioned cause, such sums as the Court may ascertain to be due to persons entitled to receive the difference between the amount paid by them for their intrastate travel in Virginia and the amount they would have had to pay under the order of the State Corporation Commission
675 of Virginia entered on the 27th day of April 1907, and if the said The Chesapeake and Ohio Railway Company shall pay or cause to be paid all damages caused by the issue of the interlocutory injunction issued herein and the costs of this cause in connection therewith, then this obligation to be void, otherwise to be and remain in full force and effect.

In testimony whereof the parties hereto have caused these presents to be duly signed in their respective names, and their respective seals to be hereunto affixed, duly attested this 10th day of July, 1907.

[Seal of The Chesapeake and Ohio Railway Company.]

THE CHESAPEAKE AND OHIO RAILWAY COMPANY,
By DECATUR AXTELL, *Vice-President.*

Attest:
C. E. WELLFORD, *Secretary.*

[Seal of the United States Fidelity and Guaranty Company of Baltimore, Maryland.]

THE UNITED STATES FIDELITY AND GUARANTY COMPANY OF BALTIMORE, MARYLAND,
By E. LESLIE SPENCE, JR.,
Attorney in Fact.

676 *Interlocutory Injunction.*

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

The President of the United States of America, to Robert R. Prentis, Henry C. Stuart, Joseph E. Willard, Richard T. Wilson, and the Times-Dispatch Company, and to all other individuals and corporations, their and each of their attorneys, agents and employees, Greeting:

The Honorable Judge of the Circuit Court of the United States for the Eastern District of Virginia, having on the 10th day of July, 1907, after due notice and hearing, ordered that an injunction issue as herein stated, to-wit:

1. That under the further order of the Court herein the defendants, Robert R. Prentis, Henry C. Stuart, and Joseph E. Willard, individually and as constituting the State Corporation Commission of Virginia and each and all of their successors in office, their
677 and each of their servants, agents and employees be and they hereby are restrained and enjoined from publishing or having published in any newspaper published in the City of Richmond, Virginia, the general order of the State Corporation Commission of Virginia, bearing date the 27th day of April, 1907, in respect to passenger rates in the bill in this cause mentioned and from taking any other step or steps whatsoever under the Constitution or laws of Virginia or otherwise to enforce the requirements of said order.

2. That until the further order of the Court herein, the defendant Richard T. Wilson, Clerk of the State Corporation Commission of Virginia, his successors in office and his servants, agents and employees be and they hereby are restrained and enjoined from publishing or having published said order of the State Corporation Commission of Virginia in any newspaper published in the City of Richmond.

3. That until the further order of the Court herein that the defendant the Times-Dispatch Company or any Agent of such Times-Dispatch Company or any other newspaper and the owner, proprietor or manager and the Agent of any such owner, proprietor or manager of any such other newspaper published in the City of Richmond and they and each and every one of them are enjoined and restrained from publishing or having published under the direction of the State Corporation Commission of Virginia or of the Clerk thereof said order of said State Corporation Commission of Virginia entered on the 27th day of April, 1907.

4. That until the further order of the Court herein the owners, proprietors or managers of any newspaper published in the City of Rich-

mond, Virginia, be and each and every one of them is hereby
678 restrained and enjoined from publishing or having published under the direction of the State Corporation Commission of Virginia or the Clerk thereof such order of the State Corporation Commission of Virginia.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at the City of Richmond, in the State of Virginia, this 10th day of July, A. D., 1907.

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Marshal's Return.

Executed July 11th, 1907, by delivering in person to Robert R. Prentis, Joseph E. Willard and R. T. Wilson at the office of the State Corporation Commission of Virginia in Richmond, Va., each a true copy of the within order, and further executed on the 11th day of July, 1907, by delivering in person to J. St. George Bryan at the office of the Richmond Times Dispatch in the City of Richmond, Va., a true copy of the within order, the said J. St. George Bryan being the Secretary and Treasurer of the said Richmond Times Dispatch Company, the President of the said Richmond Times Dispatch Company not being found, and further executed on the 13th day of July, 1907, by delivering in person to Henry C. Stuart at the office of the State Corporation Commission of Virginia in Richmond, Va., a true copy of the within order.

MORGAN TREAT,
United States Marshal.

679 *Demurrer of Robert R. Prentis to Bill of Complaint.*

Filed August Rules, Monday, August 5th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

The demurrer of Robert R. Prentis, one of the defendants to the above styled suit, to the bill of complaint of the above named complainant.

This defendant, by protestation not confessing or acknowledging all or any of the matters and things in the said plaintiff's bill to be true in such manner and form as the same are therein set forth and alleged, demurs thereto, and for cause of demurrer shows:

First. That the said plaintiff has not, in and by the said bill, made or stated any such cause as doth or ought to entitle it to any such relief as is thereby sought and prayed for;

680 *Second.* That this defendant has no personal or individual interest in the matters and things referred to in said bill;

Third. That the said plaintiff has an adequate remedy at law;

Fourth. That the matters and things complained of in said bill are *res adjudicata;*

Fifth. That this court has no jurisdiction to hear and determine this cause, for the reason that this is a suit against the State of Virginia;

Sixth. That this court has no jurisdiction to hear and determine this cause, for the reason that the State Corporation Commission is a "court" of the State of Virginia, and this court is therefore without power to enjoin the said Commission;

Seventh. That this court has no jurisdiction to hear and determine this cause, for the reason that, if said Commission is not such a "court" as this court is without power to enjoin, then the publication of said Commission's order of April 27th, 1907, was a necessary part of the enactment of the same as legislation, and this court is equally without power to enjoin legislation before it is enacted.

Wherefore, and for divers other good causes of demurrer appearing in said bill, this defendant demurs thereto, and humbly demands the judgment of this court whether he shall be compelled to

681 make any further answer to the said bill; and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

WILLIAM A. ANDERSON,
A. CAPERTON BRAXTON,
JNO. W. DANIEL,
Counsel for said Defendants.

We hereby certify that, in our opinion, the foregoing demurrer is well founded in point of law.

WILLIAM A. ANDERSON,
A. CAPERTON BRAXTON,
JNO. W. DANIEL,
Counsel for said Defendants.

STATE OF VIRGINIA, *City of Richmond, To-wit :*

Robert R. Prentis, being first duly sworn, deposes and says, that he is the defendant named in the foregoing demurrer; that said demurrer is not interposed for delay, and that the same is true in point of fact.

ROBERT R. PRENTIS.

Subscribed and sworn to before me this 3rd day of August, 1907.

JNO. S. EGGLESTON,
Notary Public for the City of Richmond,
in the State of Virginia.

682 *Joint and Separate Plea of H. C. Stuart, Joseph E. Willard and R. T. Wilson to Bill of Complaint.*

Filed August Rules, Monday, August 5th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

The joint and separate plea of H. C. Stuart, Joseph E. Willard, and R. T. Wilson, three of the defendants to the above styled suit, to the bill of complaint of the above named complainant.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in said plaintiff's bill to be true in such manner and form as the same are therein set forth and alleged, for plea to the whole of said bill, say that they have no personal, private, or individual connection with the subject matter of this suit, but are only interested therein, or connected therewith in so far as the said Stuart and Willard are two of the three members of the State Corporation Commission of Virginia and said Wilson is Clerk thereof; that the said State Corporation Commission was created and established, and its functions, powers, duties, and
683 procedure prescribed and provided for, by the Constitution and statutes of said State (of which this court will take judicial notice) as will fully appear from "Defendants' Exhibit A," "Defendants' Exhibit B," "Defendants' Exhibit No. 1," and "Defendants' Exhibit No. 2," all of which said exhibits are filed with, and made a part of the Answer of the defendants herein to the Rule heretofore awarded in this cause, requiring said defendants to appear before the Honorable Jeter C. Pritchard, one of the Judges of this Court, at the City of Asheville, in the State of North Carolina, on the 27th day of June, 1907, and show cause why an injunction *pendente lite* should not issue, as prayed for in said bill of complaint, and which said exhibits are hereby referred to, and made a part of this plea as fully as if the same were herein set forth *in extenso*, and are prayed to be taken and read as a part of this plea; that the said constitutional and statutory provisions are still in full force and effect, and have been in full force and effect continuously since prior to the 1st day of January, 1904, and they represent the entire constitutional and statutory provisions of said State upon the subject of this plea or relating to the subject-matter of this suit, in effect at any time since the 1st day of January, 1904; that, on the 6th day of October, 1903, certain Rules of Order, Practice and Procedure before the said State Corporation Commission were duly made and prescribed by said Commission and entered upon the records of its proceedings, and also printed and distributed, all of which was au-

thorized by the aforesaid statutes, and was in accordance with the authority and provisions of said statutes; which said Rules of Order, Practice and Procedure are filed as "Defendants' Exhibit
684 No. 3" with, and made a part of, the aforesaid Answer of the defendants herein to the aforesaid Rule to show cause why an injunction *pendente lite* should not be awarded in this suit, as prayed for in said bill of complaint, and which said Exhibit is hereby referred to, and made a part of this plea as fully as if the same was herein set forth *in extenso*, and is prayed to be taken and read as a part of this plea; that the proceedings before the said State Corporation Commission, which are referred to in said bill of complaint, and in which the said Commission, on the 27th day of April, 1907, entered its order in respect to the passenger rates of the plaintiff, complained of in said bill of complaint, were taken and had before the said Commission in strict conformity, in every respect, with the provisions, hereinbefore referred to, of the Constitution and statutes of the said State, and of the said Rules of Order, Practice and Procedure, all of which will more fully and at large appear from sections *"Fifth"* and *"Eighth"* of the aforesaid Answer of the defendants herein to the aforesaid Rule to show cause why an injunction *pendente lite* should not be awarded in this suit, as prayed for in said bill of complaint, and from "Defendants' Exhibit No. 4" and "Defendants' Exhibit No. 5," which said Exhibits are filed with and made a part of the said Answer of the defendants herein to the aforesaid Rule, and which said Exhibits, and sections *"Fifth"* and *"Eighth"* of the said Answer to said Rule, (except insofar as said sections present any defense other than the sole defense interposed by and relied upon in this plea, viz: that this suit cannot be entertained by this court because of the inhibition of Sec. 720 of the Revised Statutes of the United States, hereinafter more particularly referred to,) are hereby referred to, and made
685 a part of this plea as fully as if the same were herein set forth *in extenso*, and are prayed to be taken and read as a part of this Plea; that the Commonwealth of Virginia was a formal plaintiff in the aforesaid proceedings before said Commission, referred to in said bill of complaint, and was required to be such, by the aforesaid laws of said State; that, under said laws, the said Commonwealth, as well as any defendant in said proceedings, may, as a matter of right, now appeal from said order of said Commission, of April 27th, 1907, to the Supreme Court of Appeals of Virginia; that, for the reasons next hereinafter pointed out, this honorable court is without power to enjoin the said Supreme Court of Appeals from hearing and deciding any such appeal, should the same be taken; that, by a certain Act of the Congress of the United States, which is printed and published as Section 720 of the Revised Statutes of the United States, it is provided that, "a writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except where such injunction may be authorized by any law relating to proceedings in bankruptcy"; that no injunction is, or ever has been, authorized to be granted in this suit "by any law relating to proceedings in bankruptcy"; that, as

will appear from the aforesaid constitutional and statutory provisions of the said State, and also from the decisions and opinions of the Supreme Court of Appeals of said State, which is the highest court of, and the court of last resort in, the said State, of which said opinions and decisions, as well as of which said constitutional and statutory provisions, this court will take judicial notice, the
686 said State Corporation Commission of Virginia is a "court" of the said State, within the true meaning, purport, intent, and purview of the aforesaid Act of Congress, and was acting as such "court" continuously from the inception of the aforesaid proceedings before it, referred to in said bill of complaint, up to and including the entry of its aforesaid order of April 27th, 1907, relating to the passenger rates of the plaintiff, and was also so acting in publishing said order, in accordance with the aforesaid laws of the said State, and was also so acting at the time this suit was instituted, and at the time the restraining order was granted in this suit, and will and must so act in any and all steps which it may hereafter take in respect to matters and things referred to in said bill of complaint; and these defendants say that this honorable court is without power to grant any of the relief prayed for in the said bill of complaint, or to entertain this suit, because no relief can be granted the plaintiff herein without enjoining said State Corporation Commission, which this court is forbidden to do by the aforesaid Act of Congress; all of which matters and things these defendants aver to be true, and they plead the same to the whole of the said plaintiff's bill, as aforesaid, and pray the judgment of this honorable court whether they ought to be required to make any other or further answer to the said bill, and pray to be hence dismissed, with their costs and charges in that behalf most wrongfully sustained.

JNO. W. DANIEL,
WILLIAM A. ANDERSON,
A. C. BRAXTON,
Counsel for said Defendants.

687 We hereby certify that, in our opinion, the foregoing plea is well founded in point of law.

JNO. W. DANIEL,
WILLIAM A. ANDERSON,
A. C. BRAXTON,
Counsel for Defendants.

STATE OF VIRGINIA, *City of Richmond, To-wit:*

H. C. Stuart, being duly sworn, deposes and says that he is one of the defendants named in the foregoing plea, and that the said plea is true in point of fact, and is not interposed for delay.

H. C. STUART.

Subscribed and sworn to before me, this 5th day of August, 1907.

JNO. S. EGGLESTON,
Notary Public for the City of Richmond,
in the State of Virginia.

Petition for Modification of Interlocutory Injunction.

Filed August 29th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T Crump) and Others, Defendants.

688 To the Honorable Judges of the United States Circuit Court for the Eastern District of Virginia:

Complainant, the Chesapeake and Ohio Railway Company, respectfully represents:

1. That, heretofore, it has filed before the Honorable Judges of the Circuit Court of the United States for the Eastern District of Virginia, its bill in equity against Beverley T. Crump, Henry C. Stuart and Joseph E. Willard, members of the State Corporation Commission of Virginia, and Richard T. Wilson, Clerk of the said Commission, in which bill it was prayed, for reasons therein fully and at large set forth, that a certain order, entered by the State Corporation Commission of Virginia, on the 27th day of April, 1907, whereby a two cent per mile maximum passenger rate was imposed upon the complainant as the maximum charge it could make for carrying passengers upon its railroad in the State of Virginia, should be declared unreasonable, inoperative and void.

2. Complainant further says that, in response to the prayer of the said bill, the Honorable J. C. Pritchard, one of the judges of this Honorable Court, did on the 15th day of May, 1907, enter a restraining order against the publication and promulgation of said two cent per mile maximum passenger rate and, at the same time, caused a rule to be issued against said defendants to show cause, if any they could show, why said restraining order should not be continued and an injunction, *pendente lite*, granted in accordance with the prayer of this complainant, which said rule was made returnable at the City of Asheville, N. C., on the 27th day of June, 1907.

3. Complainant further shows that, thereafter, on the said 27th day of June, 1907, the defendants appeared at the City of
689 Asheville, N. C., in response to said rule, and filed their answer to the same, in which said answer the defendants maintained, upon the various grounds therein set up, that this Court was without jurisdiction to enter any order in the premises save an order dismissing the said proceedings for want of jurisdiction.

4. Complainant, however, says that, after full argument of and concerning all the matters of jurisdiction set forth in said answer, The Honorable J. C. Pritchard decided that the United States Circuit Court for the Eastern District of Virginia did have, and of right should maintain, jurisdiction of and concerning the matters and

things complained of in said bill; and, in pursuance of said judgment and conclusion, an order was entered by him on the 10th day of July, 1907, granting to complainant an injunction, *pendente lite*, against the doing of the things complained of in said bill.

5. Complainant further says that, since said injunction, *pendente lite*, has been granted by this Honorable Court, conferences have been held with the representatives of the State of Virginia looking to a friendly arrangement pending the final determination of the issues set up in said bill whereby this complainant shall put into effect a two cent passenger rate in conducting its intra-state Virginia business, the same to remain in effect until said issues have been finally determined; and that these conferences reached a final conclusion as is evidenced by the following letters which have been exchanged between the Honorable Claude A. Swanson, the Governor of Virginia, and this complainant and other railway companies which have suits pending in this Court similar in character to the one instituted by complainant:

690 "COMMONWEALTH OF VIRGINIA,
GOVERNOR'S OFFICE,
RICHMOND, *August* 3, 1907.

Hon. Alexander Hamilton, Counsel for Atlantic Coast Line Railroad Company; Hon. Henry T. Wickham, Counsel for the Chesapeake and Ohio Railway Company; Messrs. Joseph I. Doran and Lucian H. Cocke, Counsel for Norfolk & Western Railway Company; Hon. Alfred P. Thom, Counsel for Southern Railway Company.

MY DEAR SIRS: As Governor of Virginia, and as such interested in all that appertains to the best interests of the State, I have been very much concerned in the pending suits and controversies affecting the establishment of passenger rates in the State of Virginia. The welfare of all would, in my opinion, be subserved by a satisfactory and amicable arrangement pending the litigation.

I realize that the material interests of Virginia and the well-being of her people are largely dependent upon the development and efficiency of her transportation lines.

The railroad companies and their interests are entitled to the same rights and the same consideration that other persons and their property are entitled to; no more and no less. The people of Virginia, as I am confident, concur with me in thinking that these companies are entitled to be given no special privileges and that they should not be subjected to any unjust burdens and discriminations.

Feeling this, and as Governor of Virginia interested in all of her varied interests, it is my earnest hope that this controversy may reach such a prompt and satisfactory solution as will be beneficial to all parties.

I have cordially co-operated with the Corporation Commission and their counsel in this matter, and am frank to say am in thorough accord with the Commission with respect to their authority and their action in the rate cases.

With the approval of the Corporation Commission I tender the following proposal for your consideration, and regard it as a fair arrangement pending the final adjudication of the controversy by the Supreme Court of the United States.

1. The passenger rates, rules and regulations with respect thereto, ordered by the Corporation Commission on April 27th, 1907, shall be put into operation not later than the first of October, 1907, and continued until the pending cases are finally adjudicated by the Supreme Court of the United States, both as to jurisdiction, and merits.

2. That the cases in the Circuit Court of the United States shall be hastened for decision in the Supreme Court of the United States as speedily as possible.

3. That the evidence that has already been introduced in the cases before the Corporation Commission shall be used as the evidence in the litigation in the Circuit Court of the United States if and
691 when heard on its merits, each party having the right to supplement it with additional evidence as to facts subsequently arising.

4. That counsel representing the State and counsel representing the railroads shall agree upon a method of procedure and proper details necessary to carry these suggestions into effect, and to more accurately and carefully define and protect the rights of the parties.

I feel sure the acceptance of these suggestions would be regarded by the people of Virginia as an evidence of a disposition on the part of the railroads to have a speedy determination of this question, and to respect the wishes and judgment of the people of Virginia, and her constituted authorities in this matter.

Very respectfully yours,

(Signed) CLAUDE A. SWANSON,
Governor."

"RICHMOND, VA., *August 3rd*, 1907.

To the Honorable Claude A. Swanson, Governor of Virginia.

DEAR SIR: We beg to acknowledge your letter of this date bearing upon a proposed adjustment, *pendente lite*, of the controversy over the passenger rates adopted by the State Corporation Commission of Virginia.

The spirit of your letter is appreciated by us and in a similar spirit we accept your suggestions, subject, however, as to your first suggestion, to the necessity for us first to obtain the approval of the Circuit Court of the United States for the Eastern District of Virginia to a modification of the interlocutory injunction awarded it in our several cases. We will, however, make early application for such modification and, as these injunctions were granted on our motion, we anticipate no difficulty in having the rates in effect by the first of October as mentioned by you.

We note and have acted upon what you say in respect to an arrangement as to the method of procedure and as to the details of carrying this adjustment into effect.

Yours respectfully,

ALEXANDER HAMILTON.
H. T. WICKHAM.
JOS. I. DORAN.
(Signed) LUCIAN H. COCKE,
By JOS. I. DORAN.
ALFRED P. THOM."

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And now, Complainant, in pursuance of the understanding reached at said conference as evidenced by the letters hereinabove set forth, prays this Honorable Court that an order may be entered whereby Complainant may be authorized to put into effect on the 1st day of October, 1907, in its intra-state passenger service
692 in the State of Virginia, a maximum passenger rate of two cents per mile, the same to remain in effect pending the suit in which this petition is filed and until all of the issues set up in these proceedings shall have been finally passed upon by the Supreme Court of the United States, or shall, in some other way, have been finally disposed of.

And your Petitioner will ever pray, &c.

THE CHESAPEAKE & OHIO RAILWAY COMPANY,
By C. E. WELLFORD, *Secretary.*

[Seal of The Chesapeake & Ohio Railway Company.]

H. T. WICKHAM,
Counsel for Complainant.

STATE OF VIRGINIA, *City of Richmond, ss:*

I, C. C. Michie, a Notary Public in and for the City and State aforesaid do certify that this day personally appeared before me in my City aforesaid C. E. Wellford, Secretary of The Chesapeake and Ohio Railway Company, who being duly sworn deposes and says that the statements made in the foregoing petition are true and correct.

C. E. WELLFORD.

Subscribed and sworn to before me this 24th day of August, 1907.
[NOTARIAL SEAL.] C. C. MICHIE,
Notary Public.

No Stamp required.
My Commission Expires, Dec. 4th, 1910.

693 *Decree Modifying Interlocutory Injunction.*

Entered and Filed August 29th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

This cause came on this the 29th day of Aug., 1907, to be heard upon the bill of complaint of the Complainant with the exhibits therewith filed, upon the restraining order heretofore granted in

response to the prayer of said bill, upon the injunction *pendente lite* heretofore granted on the 10th day of July, 1907, and upon the petition of the complainant, which is, by leave of the Court, this day filed.

And it appearing to the Court upon the reading of said petition and for the reasons therein set forth that it is the desire of said Complainant to put into effect in the State of Virginia for its intrastate passenger business a maximum rate of 2 cents per mile, which rate shall be effective on the 1st day of October, 1907, and shall continue in effect until the matters at issue in this cause shall be finally disposed of by the decision of the Supreme Court of the United States or otherwise finally determined.

Now this court having considered the entire record, in-
694 cluding said petition this day filed, doth adjudge, order and decree that the prayer of the said petition be and the same is hereby granted and to this end the injunction *pendente lite* heretofore granted in this cause on the 10th day of July, 1907, be and the same is now amended and modified to the end that authority is hereby given to the complainant to put into effect on the 1st day of October, 1907, a maximum passenger rate for its intrastate passenger business in the State of Virginia of 2 cents per mile, the same to obtain and be in effect until the issues in this cause shall have been finally passed upon and determined by the Supreme Court of the United States or otherwise finally disposed of and ended.

And by consent of all parties to this suit it is further adjudged, ordered and decreed that, in so putting into effect the said maximum passenger rate where, in the putting in of such rate, either the whole number of miles or mixed number with fractions does not result in a multiple of 5 the said complainant shall add or deduct a sufficient sum to make the amount of the fare the nearest multiple of 5; and also that in applying the said passenger rate the said complainant may charge and collect a minimum sum of 10 cents per passenger for any single haul and said complainant may charge and collect in addition to regular ticket rates the fixed sum of 10 cents from all cash fare passengers who had been afforded reasonable opportunity for purchasing tickets before boarding the train, provided that the conductor shall in all such cases deliver to such passengers a receipt for the excess collected and said complainant shall redeem said receipt if presented to any of its ticket offices within thirty days from the date of its issue;

695 And by like consent it is further adjudged, ordered and decreed that the Complainant shall carry free for said passengers paying the rate of fare as herein provided the same amount of baggage as it has been heretofore accustomed to do under its rules and regulations and for excess baggage it shall make the same charges that it has been accustomed to make without increasing the same or changing the regulations in connection therewith unless authorized by a further order of this Court.

J. C. PRITCHARD,
U. S. Circuit Judge.

Aug. 29th, 1907.

Setting Down Demurrer of R. R. Prentis to be Argued.

Filed September Rules, Monday, September 2nd, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

Now comes the Complainant, The Chesapeake and Ohio Railway Company, by its Counsel in the above entitled cause and sets down the demurrer filed by Robert R. Prentis, one of the defendants herein, to be argued.

H. T. WICKHAM,
Counsel for Complainant.

696 *Setting Down Joint and Separate Plea of Henry C. Stuart, Joseph E. Willard and R. T. Wilson to be Argued.*

Filed September Rules, Monday, September 2nd, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

Now comes the Complainant, The Chesapeake and Ohio Railway Company, by its Counsel in the above entitled cause and sets down the plea filed by Henry C. Stuart, Joseph E. Willard and R. T. Wilson, defendants herein, to be argued, on the ground that the said plea does not furnish any sufficient defense to the bill of complaint herein filed.

H. T. WICKHAM,
Counsel for Complainant.

697 *Order Filing Plea of Res Adjudicata.*

Entered and Filed September 10th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

The Defendants by Counsel tendered to the Court a plea of *res adjudicata* to the Complainant's bill in this cause, and moved the Court to grant them leave to file said plea, whereupon it is ordered that said leave be given and the plea is accordingly filed.

And it is further ordered that leave be, and the same is hereby granted to the Complainant in this cause to set down the said plea to be argued, or take issue on said plea on or before the first day of the October Term 1907 of this Court.

J. C. PRITCHARD,
United States Circuit Judge.

September 10th, 1907.

698 *Plea of Res Adjudicata.*

Filed September 10th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump), H. C. STUART and JOSEPH E. WILLARD, Individually and as Constituting the State Corporation Commission of Virginia, and R. T. WILSON, Clerk of said Commission, Defendants.

The Joint and Several Plea of the Above Named Defendants to the Bill of Complaint of the Above Named Complainant.

These defendants respectively by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's said bill to be true in such manner and form as the same are therein set forth and alleged, for farther plea to the whole of said bill, say as follows:

That at a lawful session of the Virginia State Corporation Commission held on the 27th day of April, 1907, in the rooms of said Commission in the State Capitol in the City of Richmond, Virginia, said Commission entered up the final order and judgment and made

its final findings in the case then pending before said Commission known as The Virginia Passenger Rate Case, in which case the Commonwealth of Virginia was the plaintiff, and the said complainant here, and others were the defendants, which order and judgment and findings of said Commission were made pursuant to a certain notice to the complainant here, and the other steam railway companies operating lines of steam railway in the State of
699 Virginia, the defendants in said Passenger Rate Case, which notice, proceedings, and findings are set forth *in extenso* in Defendants' Exhibit No. 5, exhibited as a part of the Answer of these defendants, to the Rule heretofore awarded in this cause requiring these defendants and each of them to show cause before this Court or the Judge thereof in the United States Court Room at Asheville, North Carolina, at 10 o'clock on the 27th day of June, 1907, why an injunction *pendente lite* as prayed for in the said Bill should not be issued, to which exhibit now a part of the record in this cause, special reference is here made.

And these defendants aver that the said the State Corporation Commission of the State of Virginia which entered said order and judgment, and made said findings as set forth in said Exhibit No. 5, filed as part of said Answer, was at and before the said 27th of April, 1907, and has continued from said last mentioned date to be, and still is, and continues to be, a tribunal validly created and constituted under the Constitution and laws of said Commonwealth, and thereby duly invested and clothed with exclusive original jurisdiction and power in the matter of regulating and prescribing the charges which shall be made by the complainant and all other companies or corporations owning or operating railways in said State, for the transportation of passengers between points wholly within the territorial limits of Virginia, upon the lines of railway so owned or operated by any such company; and said Commission was, and is, and continues to be, at the date of, before, and since the said 27th of April, 1907, fully empowered by said Constitution and laws to control and regulate all such companies in respect to their duties to the public within the Commonwealth of Virginia, under and by virtue of the statutes, and sections of the Constitution of Virginia heretofore filed as part of the said Answer to said Rule as
700 Defendants' Exhibit No. 1, Defendants' Exhibit No. 2, and already made a part of the record in this cause.

And these defendants say further that the said State Corporation Commission, as it was required by law that it should do, accorded to the complainant here, one of the defendants in said Passenger Rate Case, a full and complete hearing, all proper judicial process, and all due process of law, and every opportunity to make every defense, and to assert every right which said complainant might desire, or be advised to assert in said case against the proposed reduction of the rates and fares theretofore charged by the complainant for the transportation of passengers on its lines within the State of Virginia.

And these defendants further say that the complainant here was duly made a party defendant in and to said Passenger Rate Case, appeared before said tribunal therein upon the hearing and trial

thereof by counsel, filed its Answer therein, introduced all of the testimony which it desired, or was advised to be necessary or proper for making its defense therein, both of witnesses heard and examined orally before said Commission, and of documentary and other written testimony filed before said Commission as part of the case of the said defendant, who is now the complainant here.

And these defendants further say that said tribunal (then consisting of Beverley T. Crump, said H. C. Stuart, and Joseph E. Willard), as it was its duty to do, proceeded and acted in all respects judicially in the hearing of said case, and in all of the proceedings had in connection therewith, and judicially investigated and considered all the questions and matters passed upon by said Commission in said case, or which were pertinent to the questions and matters presented therein, and in making its findings, and entering its order, and judgments aforesaid, as will appear from the

701 Exhibits filed as part of their aforesaid Answer to said Rule.

And these defendants further say that the same identical matters, and every matter, and every question which is presented or raised by the Bill of Complaint here, and every ground of complaint or of defense against the proposed action of said Commission, which the complainant seeks to assert here against the justness and reasonableness or the legality of the rates adjudicated, fixed, and prescribed in said case by said State tribunal for the transportation of passengers by the complainant upon its lines in Virginia, was presented, involved, raised, heard, tried, and passed upon, adjudicated, and finally decided by said State Corporation Commission of Virginia in due and legal manner and form in said Virginia Passenger Rate Case, in which the said Commonwealth was the plaintiff, and the complainant here was a defendant, and that said State Corporation Commission thereupon rendered and entered up its aforesaid final decision, order, and judgment upon the merits, upon the very same identical matters now sued upon in this cause.

Wherefore these defendants now here specially plead and rely upon said former judgment, in bar to the said plaintiff's present Bill, and humbly demand the judgment of this Honorable Court whether they shall be required to make any further defense thereto, and respectfully pray to be hence dismissed with their costs and charges in this behalf sustained.

WILLIAM A. ANDERSON,
JNO. W. DANIEL,
A. CAPERTON BRAXTON,
Of Counsel for Defendants.

702 I hereby certify that in my opinion the foregoing plea is well founded in law.

WILLIAM A. ANDERSON,
Of Counsel for Defendants.

STATE OF VIRGINIA, *City of Richmond, To-wit:*

R. T. Wilson, being duly sworn deposes and says that he is one of the above named defendants, and that the foregoing plea is true in point of fact, and is not interposed for delay.

R. T. WILSON.

Subscribed and sworn to before me in my City aforesaid this the 10th day of September, 1903.

T. GRAY HADDON,
Notary Public in and for Richmond City.

703 *Setting Down Plea of Res Adjudicata to be Argued.*

Filed October Rules, Monday, October 7th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump), and Others, Defendants.

Now comes the complainant, The Chesapeake and Ohio Railway Company, by its counsel, in the above entitled suit, and sets down the Joint and Several Plea of *Res Adjudicata* filed by the above named defendants, by leave of Court, on the 10th day of September, 1907, to be argued on the ground that the said Plea does not furnish any sufficient defense to the Bill of Complaint herein filed.

H. T. WICKHAM,
Counsel for Complainant.

704 *Final Decree.*

Entered and Filed December 26th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump), and Others, Defendants.

This cause came on this 26th day of December, 1907, to be heard upon the Bill of Complaint, with the exhibits therewith filed, and upon the papers formerly filed herein, including the special and limited appearance of the defendants at Rules, and their joint and separate answer to the Rule herein, returnable on June 27th, 1907, and upon the proceedings and orders heretofore had and entered in this cause, and upon the demurrer of Robert R. Prentis (substituted defendant for Beverley T. Crump), which has been duly set down to be argued, and upon the joint and separate plea of Henry C. Stuart, Joseph E. Willard, and R. T. Wilson, three of the defendants in the above styled suit, filed in this cause on the 5th day of August, 1907, which said plea has also been duly set down to be

argued, and upon the joint and several plea of *res adjudicata* filed by leave of court on the 10th day of September, 1907, in this cause by Robert R. Prentis (substituted defendant for Beverley T. Crump), Henry C. Stuart, and Joseph E. Willard, individually and
705 as constituting the State Corporation Commission of Virginia, and R. T. Wilson, Clerk of said Commission, which said plea of *res adjudicata* has also been duly set down to be argued;

And this cause having been fully argued by counsel, and the court, having fully considered the record herein and the argument of counsel, and, being of opinion that the demurrer of said defendant Robert R. Prentis is not well founded in law, it is now adjudged, ordered and decreed that the said demurrer be, and the same is, hereby over-ruled;

And the court, being further of the opinion that the joint and separate plea of the said Henry C. Stuart, Joseph E. Willard and R. T. Wilson, set down to be argued as aforesaid, is also not sufficient in law, the court doth now further adjudge, order and decree that the said plea be, and the same is, hereby over-ruled as not being good in law;

And the court, being further of the opinion that the joint and several plea of *res adjudicata* of Robert R. Prentis (substituted defendant for Beverley T. Crump), Henry C. Stuart, and Joseph E. Willard, individually and as constituting the State Corporation Commission of Virginia, and R. T. Wilson, Clerk of said Commission, set down to be argued as aforesaid, is also not sufficient in law, the court doth now further adjudge, order and decree that the said plea of *res adjudicata* be, and the same is, hereby over-ruled as being not good in law;

And the said Robert R. Prentis, standing upon his demurrer, and the said Henry C. Stuart, Joseph E. Willard, and R. T. Wilson, standing upon the said joint and separate plea filed in this cause on the 5th day of August, 1907, and the said Robert R.
706 Prentis (substituted defendant in the place of Beverley T. Crump), Henry C. Stuart, and Joseph E. Willard, individually and as constituting the State Corporation Commission of Virginia, and R. T. Wilson, Clerk of said State Corporation Commission of Virginia standing upon said plea of *res adjudicata* filed in this cause on the 10th day of September, 1907, and upon the joint and separate Answer of the defendants to said Rule returnable on June 27th, 1907, and each and all of them declining to answer the bill, it is now, upon consideration thereof, finally adjudged, ordered and decreed that the Bill of Complaint in this cause be, and the same is, hereby sustained and taken for confessed;

And this court, being of opinion that the order of the State Corporation Commission of Virginia of the 27th day of April, 1907, complained of in the Bill, violates the rights of the Complainant under the Constitution of the United States, and is in contravention thereof, as alleged in the Bill, and that accordingly the Complainant is entitled to the relief prayed for in said Bill, as set forth therein, doth so adjudge, order and decree, and doth further adjudge, order and decree that the interlocutory injunction awarded

in this cause on the 10th day of July, 1907, be, and the same is, hereby made perpetual, and accordingly:

1. That the defendants Robert R. Prentis, Henry C. Stuart, and Joseph E. Willard, individually and as constituting the State Corporation Commission of Virginia, and each and all of their successors in office, each and every of their servants, agents and employees be, and they hereby are, perpetually restrained and enjoined from publishing, or having published, in any newspaper published in the City of Richmond, Virginia, as against the Complainant herein, the general order of the State Corporation Commission of Virginia bearing date the 27th day of April, 1907, in respect to passenger rates, in
707 the bill in this cause mentioned, and from taking any other step or steps whatsoever under the constitution or laws of the State of Virginia, or otherwise, to enforce against the said Complainant the requirements of said order.

2. That the defendant Richard T. Wilson, Clerk of the State Corporation Commission of Virginia, his successors in office, and his servants, agents and employees, be, and they are hereby are, perpetually restrained and enjoined from publishing, or having published, as against said Complainant herein, said order of the State Corporation Commission of Virginia in any newspaper published in the City of Richmond, Virginia.

3. That the defendant the Times-Dispatch Company and all agents of such Times-Dispatch Company, and any and all other newspapers, and the owner, proprietor or manager and the agent of any such owner, proprietor or manager of any such other newspaper published in the City of Richmond, Virginia, and they and each and every one of them are hereby perpetually enjoined and restrained from publishing or having published, as against the complainant herein, under the direction of the State Corporation Commission of Virginia, or of the Clerk thereof, said general order of said State Corporation Commission of Virginia entered on the 27th day of April, 1907.

4. That the bonds heretofore given by the complainant in this cause be, and the same hereby are, released and canceled, and the Complainant and the sureties thereon are hereby released and discharged from any and all liability in respect thereto.

5. That a writ of injunction issue out of this Court, and under the seal thereof, directed to the said defendants, commanding, enjoining and restraining them, as hereinbefore set forth, which injunction shall be perpetual, save as is hereinafter provided.
708 But it is further adjudged, ordered and decreed that the defendants, members of, and the clerk to, the said Corporation Commission of Virginia, respectively, as set forth in these proceedings, may hereafter, in the event that the circumstances and conditions shall have changed so that the rates fixed in the order entered by said Commission on the 27th day of April 1907, shall not, under such changed circumstances and conditions, be in violation of the constitutional rights of the Complainant invoked in the Bill of Complaint in this suit, apply to this court by such proper

proceedings as they may be advised for a further order in that behalf;

And it is further adjudged, ordered and decreed that the Complainant recover of the defendants its costs in this behalf expended, to be taxed by the Clerk.

J. C. PRITCHARD,
U. S. Circuit Judge.

December 26th, 1907.

709 *Injunction.*

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump), HENRY C. STUART, JOSEPH E. WILLARD, and R. T. WILSON, Defendants.

The President of the United States of America to Robert R. Prentis, Henry C. Stuart, Joseph E. Willard, and R. T. Wilson, and to their agents, servants and employees and successors in office, and each and every of them, and to the Times-Dispatch Company and the owners, proprietors and managers of all other newspapers published in the City of Richmond, Virginia, and each of them, Greeting:

Whereas the Honorable Judge of the Circuit Court of the United States for the Eastern District of Virginia, has on the 26th day of December, 1907, made perpetual the interlocutory injunction awarded in the above-styled cause on the 10th day of July, 1907.

Now, therefore:

1. The defendants Robert R. Prentis, Henry C. Stuart, and Joseph E. Willard, individually and as constituting the State Corporation Commission of Virginia, and each and all of their successors in office, each and every of their servants, agents and employees, be and they hereby are perpetually restrained and enjoined from publishing or having published in any newspaper pub-
710 lished in the City of Richmond, Virginia, as against the complainant herein, the general order of the State Corporation Commission of Virginia, bearing date the 27th day of April, 1907, in respect to passenger rates in the bill in this cause mentioned and from taking any other step or steps whatsoever under the Constitution or laws of the State of Virginia or otherwise to enforce against the said complainant the requirements of said order.

2. The defendant R. T. Wilson, Clerk of the State Corporation Commission of Virginia, his successors in office and his servants, agents and employees be and they hereby are perpetually restrained and enjoined from publishing or having published as against said complainant herein said order of the State Corporation Commission

of Virginia in any newspaper published in the City of Richmond, Va.

3. The defendant the Times-Dispatch Company and all agents of such Times-Dispatch Company, and any and all other newspapers, and the owner, proprietor or manager and the agent of any such owner, proprietor or manager of any such other newspaper published in the City of Richmond, Virginia, and they and each and every one of them are hereby perpetually enjoined and restrained from publishing or having published, as against the complainant herein, under the direction of the State Corporation Commission of Virginia, or of the Clerk thereof, said general order of said State Corporation Commission of Virginia entered on the 27th day of April, 1907.

Hereof fail not under penalty of the law thence ensuing.

711 Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at the City of Richmond, Virginia, in said District, this Thirteenth day of January, in the year of our Lord one thousand nine hundred and eight, and of our Independence the 132nd year.

[Seal of United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Marshal's Return.

Executed January 13th, 1908, by delivering in person in the City of Richmond, Va., to Robert R. Prentis, Henry C. Stuart, Joseph E. Willard, R. T. Wilson and to Joseph Bryan, he being the President of the Richmond Times-Dispatch Co., a newspaper published in the City of Richmond, Va., and to Alfred B. Williams, he being the President of the News-Leader, a newspaper published in the City of Richmond, Va., and to A. R. Holderby, Jr., he being the Secretary-Treasurer and likewise a director of the Evening Journal, a newspaper published in the City of Richmond, Va., to each of them a true copy of this injunction order.

MORGAN TREAT,
United States Marshal.

712 *Petition for Appeal.*

Filed December 26th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump), HENRY C. STUART, JOSEPH E. WILLARD, and R. T. WILSON, Defendants.

To the Honorable J. C. Pritchard, Judge of said Court:

Your petitioners, the above-named defendants, and each of them, individually, and also in the capacity in which they are respectively impleaded in this cause, respectfully represent and complain that, in the record and proceedings had in said cause, and also in the final decree entered in said cause, on the 26th day of December, 1907, by the said court at its present term, manifest error hath happened and been committed, to the great injury and damage of said defendants.

Wherefore, the said defendants, and each of them, individually and also in the capacity in which they are respectively impleaded in said cause, conceiving themselves aggrieved, by said error, as aforesaid, hereby respectfully appeal from said decision and decree to the Supreme Court of the United States; and they pray that this, their said appeal, may be allowed, and that a transcript of the record, papers, and proceedings, upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States; and also that an order be made fixing the amount of
713 security which said defendants shall give and furnish upon such appeal.

Accompanying this petition are the assignments of error required by the rules of the said last-named court, and said defendants are ready to give and furnish the bond likewise required by said rules.

And your petitioners will ever pray, etc.

Dated December 26th, 1907.

WILLIAM A. ANDERSON,
Richmond, Va.,
A. C. BRAXTON,
Richmond, Va.,
JOHN W. DANIEL,
Lynchburg, Va.,
Attorneys and Solicitors for the said Defendants and Appellants.

714 *Assignment of Errors.*

Filed December 26th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump), HENRY C. STUART, JOSEPH E. WILLARD, and R. T. WILSON, Defendants.

Come now the said defendants, and each of them individually, and also in the capacity in which they are respectively impleaded in this cause, and file the following assignment of errors along with and accompanying their petition for appeal from the final decree entered by this Honorable Court, at its present term, on the 26th day of December, 1907, in the above-entitled cause, upon which errors they and each of them will rely, upon their said appeal:

First.

That the court erred in assuming, asserting and retaining jurisdiction of said defendants, and of said cause.

Second.

That the court erred in not sustaining the validity of the several constitutional and statutory provisions of the laws of Virginia, creating the State Corporation Commission of Virginia, and prescribing its powers and modes of procedure, which said provisions are set forth in the record of said cause, and which were, by the complain-
715 ant in said cause, "claimed to be in contravention of the Constitution of the United States."

Third.

That the court erred in finding and adjudging that the "law" of the Commonwealth of Virginia, embodied in and created by the order of the State Corporation Commission of Virginia, dated April 27th, 1907, and set forth in the record of said cause, was, as "claimed to be," by the complainant in said cause, "in contravention of the Constitution of the United States."

Fourth.

That the court erred in overruling the demurrer to the bill in said cause.

Fifth.

That the court erred in overruling the joint and separate plea filed by three of the defendants in said cause on August 5th, 1907.

Sixth.

That, if the court had jurisdiction of said cause, and of said defendants, then it erred in overruling the plea of *Res Adjudicata* filed by the defendants in said cause.

Seventh.

That the court erred in not making, rendering and entering a decree in favor of the said defendants, and against the said complainant.

The foregoing specific assignments of error cover, as it is believed, the requirements of the Rule under which they are filed; but the said defendants, as Appellants, by their counsel, in view of the im-
716 portance of this cause and the wide range of subjects necessarily involved in its proper consideration and determination, will pray the Honorable, the Supreme Court of the United States, for leave to discuss, at the hearing, all the subjects involved in said appeal, and not to confine them to the specific points designated above.

Wherefore, the said defendants, as Appellants, pray that the final decision and decree of the said court in this cause be reversed by the Supreme Court of the United States, and the said Circuit Court of the United States for the Eastern District of Virginia be directed to enter an order, dismissing this cause, at the costs of said complainant.

Dec. 26th, 1907.

WILLIAM A. ANDERSON,
A. C. BRAXTON,
JOHN W. DANIEL,
Attorneys and Solicitors for the said Defendants and Appellants.

717 *Order Allowing Appeal and Fixing Amount of Bond.*

Entered and Filed December 26th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

Upon motion of William A. Anderson, A. Caperton Braxton and John W. Daniel, Esquires, counsel for defendants, and on filing petition of Henry C. Stuart, Joseph E. Willard, Robert R. Prentis, and R. T. Wilson, individually and also in the capacity in which they are respectively herein impleaded, for an order allowing an

appeal, together with an assignment of errors accompanying the said petition,

It is ordered, on this, the 26th day of December, 1907, that an appeal be, and is hereby in open court allowed to the Supreme Court of the United States from the final order and decree entered herein on the 26th day of December, 1907, at this term of this court, perpetuating the injunction heretofore awarded against said defendants; that the amount of the bond upon said appeal be, and hereby is, fixed at the sum of One Thousand Dollars; and that a certified transcript of the record and proceedings herein be forthwith transmitted to the Supreme Court of the United States.

December 26th, 1907.

J. C. PRITCHARD,
U. S. Circuit Judge.

718 *Appeal Bond.*

Filed January 14th, 1908.

Know all men by these presents, That we, Richard T. Wilson of Richmond, Virginia, as principal, and Virginia Trust Company, as surety, are held and firmly bound unto The Chesapeake and Ohio Railway Company in the full and just sum of One Thousand Dollars to be paid to the said The Chesapeake and Ohio Railway Company, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated the 14th day of January, in the year of our Lord one thousand nine hundred and eight.

Whereas, lately at a Circuit Court of the United States for the Eastern District of Virginia, in a suit depending in said Court, *between* The Chesapeake and Ohio Railway Company, is Complainant, and Robert R. Prentis (Substituted defendant for Beverley T. Crump), Henry C. Stuart, Joseph E. Willard and Richard T. Wilson are Defendants, a decree was rendered against the said Robert R. Prentis, (Substituted defendant for Beverley T. Curnp), Henry C. Stuart, Joseph E. Willard, individually, and as constituting the State Corporation Commission of Virginia, and Richard T. Wilson, Clerk of the said State Corporation Commission of Virginia, and the said Robert R. Prentis, (Substituted defendant for Beverley T. Crump), Henry C. Stuart, Joseph E. Willard, individually, and as constituting the State Corporation Commission of Virginia, and Richard T. Wilson, Clerk of the said State Corporation Commission of Virginia, having obtained an appeal to reverse the decree in the aforesaid suit, and a citation directed to the said The Chesapeake

719 and Ohio Railway Company citing and admonishing it to be and appear at a Supreme Court of the United States, at the city of Washington, on the day in the said citation mentioned:—

Now, the condition of the above obligation is such, That if the said Robert R. Prentis, (Substituted defendant for Beverley T. Crump), Henry C. Stuart, Joseph E. Willard and Richard T. Wil-

son shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

RICHARD T. WILSON. [SEAL.]
VIRGINIA TRUST CO.,
By L. D. AYLETT, *Sec'ty.*

[Seal of Virginia Trust Co.]

Sealed and delivered in presence of
JOSEPH P. BRADY,
Clerk of the United States Circuit Court
for the Eastern District of Virginia.

Approved by—
J. C. PRITCHARD,
United States Circuit Judge.

720 *Citation.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to The Chesapeake and Ohio Railway Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the city of Washington, on the 10th day of February, A. D. 1908, pursuant to an appeal, duly allowed by the Circuit Court of the United States for the Eastern District of Virginia, and filed in the clerk's office of said Court on the 26th day of December, A. D. 1907: in a cause wherein Robert R. Prentis, (Substituted defendant for Beverley T. Crump), Henry C. Stuart and Joseph E. Willard, individually, and as constituting the State Corporation Commission of Virginia, and R. T. Wilson, Clerk of said State Corporation Commission of Virginia, are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable J. C. Pritchard, Judge of the Circuit Court of the United States for the Eastern District of Virginia, this 14th day of January, in the year of our Lord one thousand nine hundred and eight, and of our Independence the 132nd year.

J. C. PRITCHARD,
United States Circuit Judge.

Service of the above citation is hereby admitted this 15th day of January, 1908.

H. T. WICKHAM,
Attorney for Appellee.

Richmond, Virginia.

721 *Order Transmitting Record.*

And, thereupon, it is ordered by the Court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the Supreme Court of the United States and the same is transmitted accordingly.

Teste:

JOSEPH P. BRADY, *Clerk.*

Certificate of Clerk.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, Joseph P. Brady, Clerk of the Circuit Court of the United States for the Eastern District of Virginia, in the Fourth Judicial Circuit, do certify that the above and foregoing is a full, true and correct transcript of the record and proceedings of said Circuit Court, together with all things thereunto relating, in the therein entitled cause.

In testimony whereof, I hereunto set my hand and affix the seal of said Circuit Court, at the City of Richmond, Virginia, this 3d day of February, A. D. 1908.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

722 In the Supreme Court of the United States.

No. 607, October Term, 1907.

ROBERT R. PRENTIS ET ALS., Appellants,
vs.
THE CHESAPEAKE & OHIO RAILWAY COMPANY, Appellee.

It is hereby stipulated and agreed between the Appellants, by their counsel, and the Appellee, by its counsel, that, in printing the record on appeal in the above entitled cause transmitted from the Circuit Court of the United States for the Eastern District of Virginia, the Clerk of the Supreme Court of the United States shall omit therefrom the following documents and papers, which were filed as exhibits with the bill of complaint of the said Appellee, (the complainant in said Circuit Court) viz:

"Exhibit C. & O. No. 1", (described at page fourteen of said bill of complaint);

"Exhibit C. & O. No. 2", (described at page thirty-six of said bill);

"Exhibit C. & O. No. 3", (described at page thirty-seven of said bill); and

"Exhibit C. & O. No. 4", (described at page thirty-seven of said bill).

WILLIAM A. ANDERSON,
Of Counsel for Appellants.
H. T. WICKHAM,
Counsel for Appellee.

Richmond, Virginia, February 25, 1908.

[Endorsed:] 607, 21,011.

723 [Endorsed:] File No. 21,010. Supreme Court U. S. October Term, 1907. Term No. 607. Robert R. Prentis *et al.* &c. *et al.*, Appellants, *vs.* The Chesapeake & Ohio Railway Company. Stipulation to omit part of record in printing. Filed Feb'y 28, 1908.

Endorsed on cover: File No. 21,010. E. Virginia C. C. U. S. Term No. 271. Robert R. Prentis, Henry C. Stuart, and Joseph E. Willard, individually and as constituting the State Corporation Commission of Virginia, *et al.*, appellants, *vs.* The Chesapeake & Ohio Railway Company. Filed February 10th, 1908. File No. 21,010.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 272.

ROBERT R. PRENTIS, HENRY C. STUART, AND JOSEPH E. WILLARD, INDIVIDUALLY AND AS CONSTITUTING THE STATE CORPORATION COMMISSION OF VIRGINIA, AND R. T. WILSON, CLERK OF THE STATE CORPORATION COMMISSION OF VIRGINIA, APPELLANTS,

vs.

CHESAPEAKE WESTERN RAILWAY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

FILED FEBRUARY 26, 1906.

(21,011.)

(21,011.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908.

No. 272.

ROBERT R. PRENTIS, HENRY C. STUART, AND JOSEPH E. WILLARD, INDIVIDUALLY AND AS CONSTITUTING THE STATE CORPORATION COMMISSION OF VIRGINIA, AND R. T. WILSON, CLERK OF THE STATE CORPORATION COMMISSION OF VIRGINIA, APPELLANTS,

vs.

CHESAPEAKE WESTERN RAILWAY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 15, 1908.

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States to Chesapeake Western Railway, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the city of Washington, on the 10th day of February, A. D., 1908, pursuant to an appeal, duly allowed by the Circuit Court of the United States for the Eastern District of Virginia, and filed in the clerk's office of said Court on the 26th day of December, A. D., 1907: in a cause wherein Robert R. Prentis, (Substituted defendant for Beverley T. Crump), Henry C. Stuart and Joseph E. Willard, individually, and as constituting the State Corporation Commission of Virginia, and R. T. Wilson, Clerk of said State Corporation Commission of Virginia, are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable J. C. Pritchard, Judge of the Circuit Court of the United States for the Eastern District of Virginia, this 14th day of January, in the year of our Lord one thousand nine hundred and eight, and of our Independence the 132nd year.

J. C. PRITCHARD,
United States Circuit Judge.

Service of the within citation is hereby admitted this 15th day of January, 1908.

S. S. P. PATTESON,
Attorney for Appellee.

(Richmond, Virginia.)

b [Endorsed:] No. 582. Circuit Court of the U. S. Eastern District of Virginia. In Equity. Chesapeake Western Railway, Complainant, *vs.* Robert R. Prentis, (Substituted defendant for Beverley T. Crump), and others, Defendants. Citation. Filed this — day of ——, 190–. —— ——, Clerk.

1 *Transcript of Record.*

UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

At a Circuit Court of the United States for the Eastern District of Virginia, begun and held at the Court Rooms in the Custom House, in the City of Richmond, Virginia, on the first Monday in October, being the seventh day of the same month, in the year of our Lord one thousand nine hundred and seven.

Present: The Honorable J. C. Pritchard, Judge of the Circuit Court of the United States for the Eastern District of Virginia.

Among other were the following proceedings, to-wit:

In Equity.

CHESAPEAKE WESTERN RAILWAY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump), HENRY C. STUART and JOSEPH E. WILLARD, Individually and as Constituting the State Corporation Commission of Virginia, and RICHARD T. WILSON, as Clerk of the State Corporation Commission of Virginia, Defendants.

2 *Bill of Complaint.*

Filed June 1st, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia, To wit:

In Equity.

CHESAPEAKE WESTERN RAILWAY, Complainant,
versus
BEVERLEY T. CRUMP, HENRY C. STUART, JOS. E. WILLARD, and R. T. WILSON, Defendants.

Bill of Complaint.

To the Honorable Judges of said Court:

The bill of complaint of the Chesapeake Western Railway, a corporation of the State of Virginia, duly organized and existing under and by virtue of the laws of that State, having its principal office in the City of Richmond, State of Virginia, and being a citizen of said State, against Beverley T. Crump, Henry C. Stuart, Joseph E. Willard, and R. T. Wilson, defendants, all the defendants being likewise citizens of the State of Virginia.

And thereupon your complainant says:

1. That the complainant is a railroad company duly located organized and existing and doing business under the laws of the State of Virginia by virtue of an Act of the General Assembly of Virginia, approved March 3, 1900, as amended by Act of the General Assembly of Virginia, Chapter 311 of the Acts of the Extra Session of 1901, approved Feb. 16, 1901; and as amended by Order of the Circuit Court of the City of Richmond, dated March 12, 1901, changing the name of the Company to its present name;
3 and as amended by the State Corporation Commission of Virginia on the 11th day of January, 1905.

That by the terms of its Charter, and authority as aforesaid, this Complainant was, and is, authorized to construct, maintain, own, lease and operate a railroad in the State of Virginia, and under and by virtue thereof the Complainant owns, operates, and continuously since its said organization has operated, a line of railroad entirely within said State of Virginia.

That the length of the line operated by the Complainant is 40.63 miles.

2. That the Complainant is, and continuously since its organization as aforesaid has been, engaged in doing intra-state, as well as inter-state business as a common carrier of freight and passengers in the State of Virginia, and in and between said State and the other States and Territories of the United States.

3. That there has been established in the State of Virginia by *virtue* of the Constitution of that State, a commission known as the State Corporation Commission, under sections 155 and 156 of the Constitution of Virginia.

That the defendants Beverley T. Crump, Henry C. Stuart, Joseph E. Willard constitute the said State Corporation Commission, and that the defendant R. T. Wilson, is the Clerk of said Commission.

4. That certain provisions in said Constitution of the State of Virginia seek to confer upon the said Commission administrative, legislative and judicial powers in respect to the same matter; and that these provisions as applied to this complainant, and to its property in the premises, do not constitute due process of law, nor afford to this Complainant the equal protection of the laws, within the meaning of the Fourteenth Amendment to the Constitution of the United States.

That Section 5 of the Bill of Rights of Virginia provides that the legislative, executive and judicial departments of the State shall be separate and distinct; and the 39th Section of the Constitution of Virginia provides that the legislative, executive and judiciary departments shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the others, nor that any person shall exercise the power of more than one of these departments at the same time, except in the case of matters relating to the performance by transportation companies of their

4 public duties and their charges therefor.

While for the protection of every other interest in Virginia a judicial tribunal is provided, which is not clothed with legislative and executive functions in respect to the matters in which it is required to exercise its judicial functions, this protection is denied to transportation and transmission companies in respect to controversies arising about their public duties and their charges therefor.

Said Constitution, by establishing said Commission, seeks to invest the said Commission with the power of instituting proceedings before itself in respect to the public duties of said transportation and transmission companies, and their charges therefor, without any other party complainant except the Commission itself, and then of legislating thereon, and of making rules and orders in respect thereto, and of thereafter enforcing, as a court, compliance with its said Rules and Orders, and of adjudging and enforcing against the said transportation companies the fines and penalties prescribed and authorized by the Constitution, or by law, or by said Commission.

That the said Commission is by the law of its creation and otherwise, incapable of the judicial consideration and judicial action in respect to the said interests of said transportation and transmission

companies, which due process of law requires, and that the said companies are thereby deprived of the equal protection of the laws.

That in subjecting the interests of said transportation and transmission companies to a tribunal thus created, and denying to them the protection of judicial tribunals which are not clothed with legislative, administrative and executive functions in respect to matters in which they are called upon to exercise their judicial functions; and in subjecting them to the legislative power of this tribunal, unlimited and unchecked by the ordinary and orderly responsibility of an independent judicial tribunal, the said Constitution of Virginia, does not afford, in respect as aforesaid to transportation and transmission companies due process of law, but it likewise denies to them the equal protection of the laws, contrary to the 14th Amendment to the Constitution of the United States.

The Complainant respectfully prays the benefit and protection of the said 14th Amendment to the Constitution of the United States in respect to the action of the said Commission as to all matters set forth in this Bill.

5. Acting under its aforesaid alleged authority, the said Commission, on the 31st day of July, 1906, issued the following notice:

5 *Notice.*

Office of the State Corporation Commission.

RICHMOND, VA., 31*st Day of July*, 1906.

To the Several Steam Railroad Companies Doing Business in Virginia and all Persons Interested:

Take notice that the State Corporation Commission will, in the City of Richmond, on Thursday, the first day of November, 1906, at 12 o'clock noon, in accordance with the authority conferred by the Constitution of Virginia and the statutes enacted by the General Assembly of Virginia pursuant thereto, hear and consider any objections which may be urged against a rule, regulation, order or requirement of the Commission fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers over the line of any railroad company in this State, operated by steam, between points within the State of Virginia, said maximum rate to be observed whether the transportation be entirely over the line of one railroad company, or joint transportation over the lines of two or more companies; and whether the contract for transportation of a passenger or passengers be evidenced by an ordinary ticket between stations, by a mileage book or otherwise; the Commission to have, as authorized by law, the power and authority from time to time, and as often as circumstances may require, to change or revise the rate, or by rules, regulations and requirements to provide for the more convenient and expedient putting into effect and proper observance of said maximum rate. At the said hearing and consideration of the said maximum rate of two cents per mile, the method, time and extent of promulgation and putting into effect of the same will be heard and determined by the Commission, to the

end that a maximum rate for passenger transportation may be put into effect and be made applicable to all steam railroad companies doing business in Virginia, and be properly observed by them in the transportation of passengers.

BEVERLEY T. CRUMP, *Chairman,*
H. C. STUART,
JOSEPH E. WILLARD,
Commissioners.

6 That in accordance with said notice, this Complainant duly appeared before the said Commission, on November 1st, 1906, and filed an answer, a copy whereof is herewith filed, marked Exhibit A and prayed to be taken and read as a part of this bill, and thereafter in due course, introduced written and verbal evidence before said Commission to show reasons why a passenger rate of less than four cents per mile should not be established for this Complainant, and requesting that a 4¢ rate be allowed to this Complainant so that it might receive a fair remuneration for its investment and fair compensation for services rendered.

That this Complainant in its said Answer, and by argument and testimony showed that a passenger rate of less than the present 3½ cent rate a mile could not, in justice, and could not constitutionally, be established by the said Commission to govern the passenger rates of this Complainant between points in the State of Virginia, and that to attempt to establish a lower rate than 3½ cents and not to allow a 4 cent rate, would amount to confiscation of this Complainant's property and would be in other respects also, contrary to the 14th Amendment to the Constitution of the United States.

That this Complainant then was, and is, regularly charging 3½¢ per mile for straight intrastate transportation of passengers, between points on its line in the State of Virginia.

That notwithstanding said Answer, argument and testimony, the said Commission on the 27th of April, 1907, entered an Order, which, in as far as it relates to this Complainant, reads as follows:

Order of the Commission.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

In the Matter of Prescribing a Maximum Passenger Rate.

CITY OF RICHMOND, *27th Day of April,* 1907.

The State Corporation Commission having carefully considered all the proceedings herein, and all the testimony, exhibits and statements adduced and filed before it in this proceeding, and having put its conclusions in writing, which are made a part of the
7 record herein, the Commission, in order to carry out its said conclusions, now makes the following order and regulations

and prescribes the following maximum rates to be observed by all the steam railroad companies operating in the State of Virginia in the transportation of passengers.

* * * * * * *

3. It is ordered, that on and after the first day of July, 1907, the following steam railroad companies, viz.:

Chesapeake Western Railway,
Cumberland Valley & Martinsburg Railroad Company,
Danville & Western Railway Company,
Indian Creek & Pound River Railroad Company,
Marion & Rye Valley Railway Company,
Nelson & Albemarle Railway Company,
Valley Railroad Company of Virginia,
Virginia-Carolina Railway Company,
Virginia Southern Railroad Company,
Winchester & Potomac Railroad Company,
Winchester & Strasburg Railroad Company,
Norfolk & Southern Railway Company,

shall put into effect and observe a maximum rate of three cents per mile in the intrastate transportation of passengers in Virginia, and on and after the said date it shall be unlawful for the said railroad companies, or any of them, to charge or collect a greater sum than three cents per mile for the transportation of passengers over the lines controlled and operated by them respectively, except as otherwise allowed from time to time by the State Corporation Commission.

* * * * * * *

5. It is further ordered. That in applying the foregoing maximum passenger rates prescribed for the several railroads in Virginia, the railroad companies may charge and collect a minimum rate of ten cents per passenger for any single haul.

6. The payment of fares subject to the maximum rate herein prescribed shall entitle the passenger to the same transportation of baggage as now allowed by the carriers under and in connection with the present rates, and no steam railroad company operating in
8 Virginia shall change or alter the rules governing the rights of passengers with respect to the transportation of baggage in Virginia, without the consent of the Commission first obtained.

7. Steam Railroad Companies operating in Virginia may charge and collect in addition to regular ticket rates the fixed sum of ten cents from all cash fare passengers who had been afforded reasonable opportunity for purchasing ticket before boarding train; provided that the Conductor shall in all such cases deliver to passengers a receipt for the amount collected redeemable at any ticket office of the Company within thirty days from date of issue.

It is ordered, That the Clerk of the Commission do forthwith publish this order in full in one of the newspapers of general circulation published in the City of Richmond, once a week for four consecutive weeks, as required by law.

That said Order of said Commission cannot become operative, or be binding upon this Complainant, until the same is published

as aforesaid, and accordingly the said Commission in said Order directed that the defendant R. T. Wilson, Clerk of the said Commission do forthwith so publish said Order, and that unless prohibited by the Order of this Honorable Court, he may at once proceed to do so.

6. That the existing 3½ cent passenger rate upon this Complainant's line, between points in the State of Virginia, and applicable to intra-state business in said State, is not higher than is just and reasonable, whether considered in respect to the value of the property used by this Complainant in its said public intra-state business in Virginia, or in respect to the value of the services rendered to passengers by this Complainant.

That the said Order is an attempt to prevent the Complainant from charging and collecting a 3½ cent rate or any greater and reasonable rate.

That as an incident of its property, and as a property right, this Complainant has the right to charge and collect a reasonable rate; and that as much as a 4 cent rate is and would be reasonable on a short and small line such as Complainant's road.

That to prevent it from charging and collecting said reasonable rate, is to deprive it of its property without just compensation, and without due process of law, and is to deny to it the equal protection of the laws. This Complainant claims in regard thereto,
9 the protection of the Fourteenth Amendment to the Constitution of the United States.

7. That the effect of the 3 cent and 3½ cent and the 4 cent passenger rates upon the business of this Complainant, between points on its line, within the State of Virginia, and which does not pass out of said State *en route*, calculated upon the basis of business for the year ending June 30, 1906, would be as follows:

That the following figures are, Complainant is informed and believes in their net result, representative of future conditions, except that the net result may in the future be even more unfavorable to this Complainant, owing to the fact that operating expenses will in all probability increase, and, in the estimation of the Complainant, the reduced rate will not cause an increased revenue.

(A) Net earnings from intra-state business are about.	$13,613.30
Gross earnings from intra-state business are 66.38% of whole gross earnings; and net earnings from intra-state are taken at 66.38% of the whole net earnings.	
(B) Gross intra-state passenger earnings were.....	$24,892.91
Reducing the rate to 3¢ would cause a decrease of about.....	3,012.00
Therefore (A) net intra-state earnings would be only about.....	10,601.30
(C) If the 4¢ rate is applied, there will be an increase, and the net (A) revenue from inter-state business would be about.....	16,625.30

(D) Value of property of Complainant on which it should receive a reasonable return is..... $1,419,000.00
66.38% of this used in intra-state business is... 941,932.00
On which at 3¢ rate it would receive a net intra-state profit as above of..... 10,601.30
which is .011% per annum (1-1/10%)

At 3½¢ rate it would make..... 13,613.30
which is .015% per annum (1½%)

At 4¢ rate it would make..... 16,625.30
which is .018% per annum (1-8/10%)

The passenger business represents 53.33% of *of* the entire intra-state business of the road, and therefore a reduction in passenger rates is very serious.

10 That there is and should be, in respect to this complainant's property, as in respect to all other classes of property in the State of Virginia, a difference between the Commercial and the Tax Assessment Value; the Commercial Value being greater than the value assessed for taxation; and that the assessed value of the property of the Complainant for the purposes of taxation, though sufficiently large for that purpose, is not as great as the value at which the property should be considered in determining this Complainant's right to obtain reasonable returns thereon from its actual original investment, or in determining the value of the services rendered.

That the said road is 40.63 miles long, and is composed of eighty pound rails, laid on standard ties, supported mostly on stone ballast; that the Complainant has stations and freight depots, a round house and machine shop, and switches; that it runs two round trip passenger trains, and one round trip freight train, each week day; and that it operates two passenger and two freight engines and 42 cars; that the road is worth $35,000 a mile, and the unpaid coupons on bonds, issued at that rate, add an investment of $300,000 besides.

That the Complainant has $1,419,000 of 4% bonds outstanding, on which the annual interest is $56,760, which has not been paid, or charged against earnings, and which has been in default since the bonds were issued in 1901; in 1907 for the first time it has been decided to charge its Profit and Loss Account with all interest on bonds to date, amounting to over $274,000.00 and as they shall mature, and to show the deficit therefor in the income account.

That against the earnings of the Road no salaries are paid or charged for President, Vice-President, or Secretary and Treasurer; and the net earnings from inter-state business are about $6,894.84, and from intrastate are about $13,613.30; whereas the Complainant should be able to pay the officers reasonable salaries, and still net more than $56,760 each year on its entire business, that is 66.38% thereof, which is $37,677.28, should be earned on its intra-tate business.

That 66.38% of $1,419,000, that is to say, $941,932 is less than the fair and reasonable value of the properties of the Complainant

in Virginia used by it for the purpose of producing revenue in its intrastate business, and is less than a fair figure at which to set the value thereof, for the purpose of determining the rates that the complainant should be allowed to charge; and is less than a fair and reasonable figure to use in deciding what is the value of the service rendered by the Complainant to the public.

That this Complainant's road is operated as economically as practicable, and that it has not been possible under the conditions existing, for the Complainant to operate its road for less than it has been operated. That the percentage of operating expenses and taxes to gross earnings, on intra-state business, was 70.85.

The maximum rate, fixed by the proposed Order of the State Corporation Commission is lower than a just compensation for the service rendered, and lower than would afford Complainant a just return upon the value of its property used in performing the service in return for such rate, and the effect of said Order, because thereof, and also because said Order undertakes to impose an immovable maximum, is to deprive this Complainant of its property, without due process of law, and of the equal protection of the laws, and to take its property without just compensation, contrary to said Fourteenth Amendment, to the Constitution of the United States, the benefit and protection of which is again, in this regard, expressly set up and claimed.

8. That the effect of the reduction of this Complainant's present rate of 3½ cents, by the establishment of the proposed three cent passenger rate, would not be limited to the intra-state business in Virginia of this Complainant, but would inevitably effect any inter-state passenger business of this Complainant, and impair and diminish any revenue derived therefrom, from the fact that all, or nearly all, inter-state passenger rates within the State of Virginia, are made on a combination of locals, or by the use of locals as factors.

9. That the present 3½ cent passenger rate charged by this Complainant between points on its line within the State of Virginia, is not sufficiently high to give it a reasonable compensation for the service rendered by it to passengers on its line; that the Complainant's rates are not unreasonable, illegal or discriminatory as between individuals, or as between localities, and that they in no way violate any law.

That as an incident of its property, and as a property right, this Complainant has the right to charge and collect for its transportation services which it renders, a reasonable compensation, and that Complainant is protected by the Fourteenth Amendment to the Constitution of the United States in making, receiving and collecting its present charges.

That the effect of the proposed rate ordered by the Commission would be to materially diminish this Complainant's revenues and to reduce them below what would be a reasonable compensation for its services rendered.

12 That to prevent it from charging said reasonable compensation would be to deprive it of its property without just compensation, and without due process of law, and would be to deny to it the equal protection of the laws. This Complainant claims in regard thereto, the protection of the Fourteenth Amendment to the Constitution of the United States.

10. This Complainant is further advised that it has as an incident of its property, and as a property right, the right to increase its charges whenever, under the circumstances existing from time to time, its charges are less than a reasonable compensation for the services which it renders; and that any action of the said Commission, which attempts to fix a maximum charge for the future, directing that the Complainant cannot charge a higher rate, no matter how unreasonably low such maximum rate may become under changed conditions, is depriving the Complainant of its property right to increase its rate up to what would, under changed conditions, be a reasonable compensation for the services rendered, and would therefore, violate the Fourteenth Amendment of the Constitution of the United States; that said Order of said Commission undertakes to fix such a maximum rate, and therefore is unconstitutional and void, as last aforesaid.

The Complainant is therefore advised that any action by the State which attempts to fix a maximum charge beyond which the Complainant cannot go, no matter how unreasonably low such maximum may become under changed conditions, would be to deprive the Complainant of its property right to increase its rate up to what would, under such changed conditions, be a reasonable compensation for the services rendered, and would therefore, violate the Fourteenth Amendment to the Constitution of the United States. This Complainant avers that the said Order of the Commission undertakes to fix a maximum beyond which this Complainant cannot go, no matter what may be the circumstances, and that, therefore, said Order is unconstitutional and void, as being in violation of the Fourteenth Amendment to the Constitution of the United States.

11. That a 4 cent rate for intra-state passenger service, between points on the complainant's road, which are in the State of Virginia, would not be higher than would be just and reasonable, whether considered in respect to the value of the property used by this Complainant in its said public intra-state passenger service in Virginia, or in respect to the value of the services rendered to its passengers by this Complainant.

That said increase would not result in a decrease of the gross intra-state passenger earnings of the Complainant.

13 That the effect of the said Order, and the refusal of the Commission to allow an increase to 4 cents, as asked, is an attempt to prevent the Complainant from charging and collecting a 4 cent rate.

That as an incident of its property, and as a property right this Complainant has the right to charge and collect a reasonable rate and to increase its rates until they are a reasonable compensation for its services rendered.

That to prevent it from charging and collecting a reasonable rate, and from increasing up to a reasonable rate, is to deprive it of its property without just compensation, and without due process of law, and is to deny to it the equal protection of the laws. This Complainant claims in regard thereto the protection of the Fourteenth Amendment to the Constitution of the United States.

12. That this Complainant's existing rates are, and a 4 cent rate would be, properly adjusted in their relation between its inter-state rates and its intra-state rates in Virginia; that all its charges are, and a 4/ rate would be, just and reasonable, and they do not, and will not as increased, give to this Complainant, on its intra-state business, more than a just and reasonable return upon the value of its property used in its said intrastate transportation service, or a just and reasonable compensation for the services rendered; and that any reduction, and any failure to obtain an increase in its rate for the purpose of increasing its intra-state revenue, will seriously obstruct the Complainant in providing, and will deprive it of its power to properly provide, the facilities which the public commerce, dependent upon it for transportation, absolutely requires for the movement of traffic, both intra and inter-state.

That the effect of the said reduced rates proposed in said Order of said Commission would be; to destroy the proper adjustment of its intra-state rates in Virginia to its inter-state rates generally; and to require that a preference shall be given by this Complainant, and an undue discrimination exercised by it, in favor of its intra-state over its inter-state passenger traffic, as it is, or may be in the future; and that to require such preferential and undue discrimination would be to so regulate and burden inter-state commerce as to violate the Commerce Clause of the Constitution of the United States, the benefit and protection of which this Complainant respectfully sets up and claims.

13. That it is provided by the Constitution of Virginia that
14 any corporation failing to obey any valid Order of the Commission may be fined by said Commission, in a sum not exceeding $500, and that each day's continuance thereof shall be a separate offense, and that in no proceeding by any person against said Complainant shall the reasonableness and validity of any rate or rule prescribed by the Commission, within its authority, be questioned.

If therefore the said Order herein complained of shall be permitted to go into effect, it will subject this Complainant to the danger of a multitude of suits, based upon said Order, and to prosecution for penalties in large amounts, and that these will be unreasonable, burdensome and expensive to the Complainant, and will result in a depreciation of the value of the Complainant's property, impair its credit, and consequently diminish its ability to perform its public interstate and intrastate service, and thereby inflict great and irreparable injury and damage, not only upon the Complainant, but also upon the traveling public of Virginia and of other States of the United States.

14. That this Complainant desires by regular proceedings in this Honorable Court to obtain a judicial determination of its rights under the Constitution of the United States, as to the matters set forth

in this Bill, and it prays the Court that a Temporary Restraining Order may issue restraining the said Commission, among other things, from preventing this Complainant from charging and collecting its present rate of 3½ cents for passenger transportation, and from preventing this Complainant from charging and collecting, after July 1st, 1907, a reasonable rate for passenger transportation.

15. That there may be adopted herein a proceeding analagous to that provided by Sub-section E of Section 156 of the Constitution of Virginia, namely, the execution of a bond by this Complainant in a sum not exceeding ten thousand dollars, conditioned to pay into the Registry of this Court each month, or from time to time as the Court may order, such sums of money as shall be equal to the difference between the aggregate passenger rates charged and received by it, and those fixed at 3 cents by the said Order of the Said Commission, and that the Complainant shall give to any person purchasing a ticket on its line in the State of Virginia, at the time and place of purchase, a transferable coupon, representing the sum to which said person or his transferee shall be entitled upon the final decision upholding the constitutionality of said Order of the Commission; in that event, said coupons, without interest thereon, to be payable out of the cash deposit in the Registry of this Court, and that this Complainant shall from time to time report to the Court, as ordered by said Court, showing the amount of such "excess" passenger fares collected, and that from time to time the Complainant shall give such further bond as the Court may require to secure proper payment of such excess fares into Court; and that on the final determination herein, that this Complainant is entitled to the amounts covered by said bond or bonds, the said bonds be released and canceled, and if any amount shall have been paid into the Registry of the Court, pursuant thereto, that upon such determination in favor of the Complainant, the sums so paid into the Registry shall be repaid to the Complainant by Order of this Court.

16. That the subject matter of this suit involves questions *and rights* under the Constitution of the United States, and rights asserted by the Complainant *thereunder*, and protected thereby, and the amount involved herein exclusive of interest and costs, exceeds the sum or value of $2,000.00.

17. The Complainant avers that it will be irreparably injured unless an injunction be granted as hereinbefore prayed, and relief be given to it in this suit.

In consideration whereof, and forasmuch as your complainant is remediless in the premises under the common law, and can have adequate relief only in a court of equity, where matters of this nature are properly cognizable and relievable, and to the end, therefore, that the defendants hereinafter named may answer the several matters and things hereinbefore set forth as fully and particularly as if the same were again here repeated, and they were thereunto specially interrogated, but not under oath, answer under oath being expressly waived, the complainant prays that the said defendants be required so to answer, and that an injunction may be issued out of this court enjoining and prohibiting the defendants, Beverley T. Crump,

Henry C. Stuart, and Joseph E. Willard, constituting the State Corporation Commission of Virginia, and each of them individually, and jointly, as constituting said State Corporation Commission of Virginia, and each and all of their successors in office, and the defendant R. T. Wilson, as such Clerk of said Commission, and his successor in office, from publishing or having published in any newspaper published in the City of Richmond, Virginia, the said Order of the said State Corporation Commission of Virginia, bearing date the 27th of April, 1907, in respect to passenger rates,
16 in as far as the same applies, or would apply, to this Complainant or any similar or other Order; and from taking any other step or steps whatsoever under the Constitution or laws of Virginia, to enforce the requirements of the said Order, or of any similar order, or to hinder or prevent this Complainant from receiving a reasonable compensation for its services on or after July 1st, 1907, or to hinder or prevent complainant from increasing its passenger charges to the extent that such increase may be fair and reasonable and just, or to fine or punish the Complainant for increasing its said rate; and enjoining and prohibiting the Owner, proprietor, manager or agent of any such owner, proprietor or manager of any newspaper in the City of Richmond, Virginia, from publishing or having published under the direction of the Commission or the Clerk thereof such order of the Commission; and that the requirements of said Order, and of such new Orders of the said Commission, and each and every provision thereof, be declared to be unreasonable, unfair and unjust to this Complainant, and unconstitutional, null and void; and that the Complainant be allowed to charge a reasonable passenger rate, as aforesaid.

That in the meantime, and until a decision can be had upon this complainant's motion for the injunction herein prayed, a restraining order may be granted, restraining the acts sought herein to be enjoined, your complainant hereby averring that there is danger of irreparable injury from delay if action should not be taken until such motion for an injunction could be tried upon its merits.

That a writ of injunction be issued, etc., commanding, etc., enjoining the defendants as above prayed.

That on the final hearing, said injunction as herein prayed, may be made perpetual; that the said Order of the said Commission, and each and every requirement thereof, be declared null and void by a decree of this Court, so far as the same relates to your Complainant's railroad in Virginia, or to any of its business, and that your Complainant may have such other and further relief as in justice it may be entitled to, and as to equity is meet.

May it please your Honors to grant unto your Complainant a temporary restraining order as aforesaid, the Writ of Injunction aforesaid, and a Writ of Subpœna addressed to said defendants Beverley T. Crump, Henry C. Stuart and Joseph E. Willard, individually and as constituting the State Corporation Commission of Virginia, and to the said defendant, R. T. Wilson, as Clerk of the said State Corporation Commission, commanding said defendants, under a penalty therein named, to appear in this Court, on some

certain day to be thereby fixed, to answer the premises, and
17 abide by and perform such decree as may be passed herein, but said answers as above stated not to be made on oath, answers under oath being expressly waived.

This is the first Application by your Complainant for a restraining Order or Injunction in this Cause.

CHESAPEAKE WESTERN RAILWAY, *Complainant,*
By ROBERT McM. GILLESPIE,
Pres. & Gen. Man.

S. S. P. PATTESON, Esq.,
Solicitor for Complainant.

STATE OF NEW YORK, *County of New York, ss:*

Personally appeared before me, Laura E. Smith, a Notary Public, duly commissioned, qualified and acting as such in and for the County and State of New York, Robert McM. Gillespie, who, upon being first duly sworn, deposed and said:

That he is President and General Manager of the Chesapeake Western Railway, the Complainant in the foregoing Bill of Complaint, and that he is acquainted with the passenger traffic and tariff of said Company; that he has read the foregoing Bill and knows the contents thereof; that the facts therein stated as of Complainant's own knowledge are true; that the facts therein stated upon Complainant's information and belief, he believes to be true.

ROBERT McM. GILLESPIE.

Sworn and subscribed to before me this 29th day of May, 1907.

My Commission as Notary Public expires March 30, 1909.

In witness whereof I have hereunto signed my name and affixed my notarial seal in the County and State of New York this 29th day of May, 1907.

[NOTARIAL SEAL.] LAURA E. SMITH,
Notary Public.

18 "A."

Before the State Corporation Commission of Virginia.

In re Proposed Two Cent Passenger Rates.

Answer of Chesapeake Western Railway.

The Chesapeake Western Railway, one of the respondents in the above entitled cause, respectfully shows that:

I.

A.—There was served upon it a notice from this Commission, bearing date July 31st, 1906, stating that the Commission would, on the 1st day of November, 1906, consider and hear any objections to the issuing of an order concerning passenger rates in the State of Vir-

ginia, and that pursuant to said notice, said Railway appears, and respectfully submits the following:

B.—Some railways, on account of location and connections, carry so many passengers that a low rate may give those railways a fair return, while others carry so few that the latter passengers in that section of the State must pay higher rates for the service; upon the theory that wherever located, a railway, economically run, is entitled to a fair remuneration on its money invested; and owing to the fact that, a railway has certain fixed charges that must be met, no matter how few people travel, and to the fact that a small volume of business is handled at a higher proportional expense than is a large volume of business.

II.

The Chesapeake Western Railway objects to any order of this Honorable Commission directing the Chesapeake Western Railway to transport passengers at the rate of two cents per mile, and requests authority to charge four cents per mile.

The towns along the Chesapeake Western Railway are all small, with exception of Harrisonburg, so that the volume of travel will probably not increase very rapidly as time goes on, nor will it at once on rates being reduced, for we believe that all the people who need to travel do so now.

The revenue of the road must be increased some way in fairness to the owners. The Officers and Directors of the Railway do not
19 believe that the public are paying a large enough price, in fairness for the service rendered; and when the Officers show the economic operation of the Railway (which pays no salary to President, Secretary or Treasurer), and that its gross revenue does not even then meet the interest on the bonds, or pay dividends on the stock, they respectfully submit that this evidence conclusively proves that the rates are too low, for the travelling public (and shippers) must support the railways. The rates on request of this Railway should be ordered raised by the Corporation Commission, until said 4% interest and 2% dividends are paid, or until the gross revenues begin to decline, owing to evident overcharges. As long as the gross revenues continue to hold their own, or increase, and yet the said 4% interest and the 2% dividends are not paid, the unrebutable presumption is that the rates are still too low, in fairness to the Railway.

The Chesapeake Western Railway has been a dead loss to the owners from the beginning, yet of immense advantage to the people along its line. Real estate values have increased, and the markets of the large cities have been opened to the public here; which latter fact is shown by increased cost of farm products here. Yet in this prosperity the Railway has not shared.

III.

The Chesapeake Western Railway suggests that the question of rates, mileage books and tickets be settled by order of the Commission as follows:

A.—The Chesapeake Western Railway,—and such other Railways

as may be decided upon by the Commission—may be allow for the reasons hereinafter set forth in section IV. to charge four cents a mile.

B.—The Chesapeake Western Railway shall issue straight tickets between stations at the rate of four cents a mile; and 500 mile mileage books at the rate of two cents per mile.

C.—That all mileage books, whether sold by the Chesapeake Western Railway or other Railways, shall be good on all Railways in the State, except that when used on Chesapeake Western Railway or other roads ordered, the conductors may take up two miles of coupons for every mile travelled.

D.—Pages torn from mileage books when taken up by conductors, shall be turned over by the railway on which they have been used, to the railway from which they have been originally bought, and the latter railway shall pay to the railway turning in these pages a sum equal to two cents for every mile of mileage book so turned in.

The fact that the Chesapeake Western Railway may tear from the book two miles for each mile traveled will lead to no complications and no extra bookkeeping.

E.—On the last page of mileage books should appear for protection of conductors, "four cents authorized on Chesapeake Western Railway"—and the names of other railways to which this rate is allowed. So many other provisions appear on the books, that the addition of this clause will not be inconvenient or expensive.

F.—Passengers should cash in their unused mileage books within one year, and only from the Railway from which they were bought. Small roads might not keep at stations sufficient funds.

G.—Price of tickets from any station on one line to a station on the other, may be easily calculated on the mileage basis, with due regard to the rate being two cents on some, and four on others.

IV.

Any road operating a main line of less than fifty miles, and whose total annual freight and passenger revenue is less than $5,000.00 per mile (or if the Commission prefers, whose annual passenger revenue is less than $1,000.00 per mile) should be allowed to charge four cents a mile.

A.—The taking of fifty miles as a basis is merely arbitrary; but we took it because the Chesapeake Western Railway is only about 41 miles long, and because all the independent railroads in Virginia having a small mileage revenue are less than 50 miles long.

B.—The Chesapeake Western Railway should receive four cents a mile, (and charge corresponding freight rates) until its gross earnings from operation are $5,000.00 per mile, or about $200,000.00 a year.

Its gross earnings for the year ending June 30th, 1906, were only $70,350.06 (not paying any salary to President, Secretary and Treasurer); the Total Operating Expenses and Taxes were $49,841.92, leaving net earnings of only $20,508.14, to meet payment of $56,766.00 of interest on bonds.

21 The percentage of operating expenses and taxes, was 70.85%. If this were reduced to 60%, on a gross income of $200,000.00 the net earnings would be $80,000.00; giving $56,760.00 interest on bonds, and $23,240.00 which would be less than 2% on stock (of equal amount with the bonds).

Rates cannot be too high on the Chesapeake Western Railway, in fairness to it, until the net earnings are sufficient to pay 4% on the bonds (about $35,000.00 per mile), and about 2% on stock (of equal amount); for the bonds do not now represent as much money as has been spent in the construction, maintenance and operation of the road. For years it did not pay expenses, and items of expense that could not be met were not charged against it, but were paid outside by the owners of the bonds. The trunk lines of Virginia are paying coupons on bonds and dividends on stocks—the Chesapeake Western Railway has never done either.

V.

For Year Ending June 30th, 1904 (and 1906, as Shown in Brackets).

Passengers.

No. of Passengers Carried.

Valley Ry.	C. W. Ry.	Southern Ry.	N. & W. Ry.
101,998	68,698	1,904,644	2,181,065 (3,805,668)

Passenger Earnings Per Train Mile.

.79	.32 (.39)	1.01	1.14

Average Passengers Per Train Mile.

25 (12)	11	33	42

Freight.

No. of Tons Offered.

Valley Ry.	C. W. Ry.	Southern Ry.	N. & W. Ry.
204,011	46,482 (57,091)	3,241,251	9,892,587 (19,266,534)

22

Average Tons Per Train Mile.

129.82	35.97 (48.58)	155.27	488.51 (increase of) (48.)

Freight Earnings Per Train Mile.

2.20	1.27 (1.59)	1.75	2.40

Freight and Passenger.

Gross Earnings Per Mile.

2,599.09	1,407.84 (1,716.99)	6,645.80	13,306.23 (15,374.00)

Gross Expense Per Mile.

1,896.64	1,206.44 (1,149.56)	4,925.19	8,009.12

Net Per Mile.

702.45	201.40 (567.44)	1,720.61	5,297.11 (6,165.00)

The comparison is made of 1904, taken from latest reports at hand: with addition of comparison for 1906 where obtainable.

The volume of business of C. W. Ry. is very small in comparison with mileage business of roads in same location.

The rates are also too low. As an example we submit the following:

Comparison of Rates.

Miles.	Roads.	1	2	3	4	5	6	Hay	Bark
	C. W. Ry.	5	5	5	4	4	3	2	2
5 miles and under,	N. & W.	12	10	8	7	6	5	5	3
	B. & O.	16	12	10	8	7	6		
	Southern	12	10	8	6	5	4	4	3

The same is true up to 40 miles.

VI.

In year ending June 30th, 1906, 23,308 passengers out of 66,961 travelled to and from Harrisonburg, the center of the line, 14,022 travelled on excursions—held at either end of the line. In spite of long rides of excursionists, the average distance travelled, was 14.80.

Conclusion is that with exception of excursionists the average distance travelled is very short.

23 VII.

There is practically no through travelling on this Railway. Only 1,100 passengers, out of 66,961, took the Norfolk & Western at our only terminus connection.

VIII.

Our rates are now 3½ cents per mile on straight tickets: and round trips, 3 cents per mile travelled: excursion rates in summer: special Court Day rates once a month: and mileage books under said Act of 1906.

Conclusion.

The Commission ordering the issue of mileage books, at a two cent rate, should allow the Chesapeake Western Railway (and others as ordered) to collect two coupons per mile travelled. Straight tickets on Chesapeake Western Railway to be issued at 4 cents a mile, and round trip at 3½ cents a mile travelled. Straight tickets and return tickets between points on different roads, to be issued on mileage basis calculated as above.

And now having fully answered, this respondent prays for the relief asked for herein.

CHESAPEAKE WESTERN RAILWAY.
ROBERT McM. GILLESPIE,
RMB/L. *President and General Manager.*

CITY OF RICHMOND, *State of Virginia, To-wit:*

I, W. H. Price, Jr., a Notary Public in and for the said State and City aforesaid, do hereby certify that Robert McM. Gillespie, who is the President and General Manager of the Chesapeake Western Railway, the above mentioned respondent, personally appeared before me in my State and City aforesaid, and made oath that the allegations to the foregoing answer are true, as far as based upon his own knowledge, and so far as based upon knowledge derived from others he believes them to be true.

Sworn to and subscribed before me, this the 1st day of November, 1906.

My commission expires on the 20th day of February, 1910.

W. H. PRICE, JR.,
Notary Public.

24 *Temporary Restraining Order.*

Entered and Filed June 1st, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

CHESAPEAKE WESTERN RAILWAY, Complainant,
versus
BEVERLEY T. CRUMP and Others, Defendants.

Upon reading the verified bill in this cause, and upon its being made to appear to the Court that there is danger of irreparable injury to the complainant from delay, unless the acts sought to be enjoined herein are restrained until a hearing upon the motion for an injunction in this cause, it is now ordered:

1. That the defendants, Beverley T. Crump, Henry C. Stuart, and Joseph E. Willard, constituting the State Corporation Commission of Virginia, and each and all of their successors in office, their and each of their servants, agents and employees, be, and they are, hereby restrained and enjoined from publishing, or having published, in any newspaper published in the City of Richmond, the general order of the State Corporation Commission bearing date the twenty-seventh day of April, 1907, in respect to passenger rates, in the bill in this cause mentioned, and from taking any other step or steps whatsoever under the Constitution or laws of Virginia to enforce the requirements of said order, or any similar order or order forbidding an increase of passenger rates, or finding or punishing this complainant for so increasing its passenger rates, and from taking any other step or steps whatsoever under the Constitution or laws of Virginia to enforce the requirements of the said order, or said other orders.

25 2. That the defendant R. T. Wilson, as Clerk of the State Corporation Commission, and his successors in office and his agents, servants and employees, be, and they are, hereby restrained and enjoined from publishing or having published the said order of the State Corporation Commission in any newspaper published in the City of Richmond, Virginia.

3. That the owner, proprietor, or manager, or agent of any such owner, proprietor or manager, of any newspaper in the City of Richmond, Virginia, be, and each and every one of them is, hereby restrained and enjoined from publishing, or having published, under the direction of the State Corporation Commission, or of the Clerk thereof, such order of the State Corporation Commission.

4. That the defendants and each of them show cause before this court in the United States Court Room at Asheville, N. C., at ten o'clock a. m. on Thursday, the 27th day of June, 1907, why an injunction *pendente lite*, as prayed in the bill, should not be issued, and that a copy of this order be served as soon as practicable upon each of the defendants.

5. That this restraining order shall be in force and effect from the date hereof, and until the determination of the complainant's motion for an interlocutory injunction herein; provided, however, that upon the failure of the complainant or some one for it, to execute, within ten days from this date, a bond in a penalty of Ten Thousand Dollars, payable to the defendants, with surety approved by one of the judges of this court, and conditioned substantially as hereinafter mentioned, the said restraining order shall stand dissolved. The condition of said bond shall be substantially as follows:

"The condition of the above obligation is such that

Whereas a restraining order has been made in the above entitled cause, by the terms of which the defendants, and each of
26 them, are restrained, until an application for an interlocutory injunction herein shall be determined, from doing or causing to be done, certain acts mentioned in said restraining order; now should said restraining order be dissolved or vacated as having been wrongfully issued or because the said acts were improperly restrained, then that the above named Chesapeake Western Railway shall pay, or cause to be paid, all damages caused by the issue of said restraining order and the costs of this cause in connection therewith."

6. That, if for any *any* reason the determination of the motion for an injunction *pendente lite* be not made until after July 1, 1907, the date fixed in the said order of the State Corporation Commission of Virginia for the rates thereby prescribed to go into effect, then the complainant shall, prior to that date, apply to this court, or a judge thereof, for an order directing the giving of a bond by the complainant as prayed for in the 15th paragraph of the bill in this cause, to secure the payment into the registry of this court, in case the said order of the Commission herein complained of is in this cause finally declared valid and constitutional, of the excess which the complainant may receive on business covered by said order, over the amount it would have been entitled to receive on the basis of charges fixed by said order.

June 1st, 1907.

J. C. PRITCHARD,
United States Circuit Judge.

And thereupon came the above named complainant and filed the bond as provided in this order, which bond was this day ap-
27 proved by a judge of this court as a full compliance with the provision thereof requiring the giving of a bond.

June 1st, 1907.

J. C. PRITCHARD,
United States Circuit Judge.

Marshal's Return.

Executed June 5th 1907, by delivering in person to R. T. Wilson, Clerk of, and to Henry C. Stuart, Joseph E. Willard and Robert R. Prentis members of, and constituting the State Corporation Commission of Virginia, (the said Robert R. Prentis being the successor

in office of Beverley T. Crump within named), at the office of the said State Corporation Commission of Virginia, in the city of Richmond, Virginia, and, at the office of the Richmond Times-Dispatch Company in the city of Richmond, Virginia, to John Stewart Bryan, a Director and the General Manager of the Richmond Times-Dispatch, a newspaper printed and published in the city of Richmond, Va., the President of the said Richmond Times-Dispatch Company not being found, and, at the office of the News Leader Company, in the city of Richmond, Va., to Alfred B. Williams, President and Manager of the News Leader, a newspaper printed and published in the city of Richmond, Va., and, at the office of the Evening Journal in the city of Richmond, Va., to Charles B. Cooke, President of the said Evening Journal, a newspaper printed and published in the city of Richmond, Va., each a true copy of the within order.

MORGAN TREAT,
United States Marshal,
By M. J. ENRIGHT, *Deputy.*

28 *Bond.*

Filed June 1st, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

CHESAPEAKE WESTERN RAILWAY, Complainant,
versus
BEVERLEY T. CRUMP and Others, Defendants.

Know all men by these presents That Chesapeake Western Railway, a corporation of the State of Virginia, the principal office of which is in the City of Richmond, in said State, as principal and The United States Fidelity & Guaranty Co., as Surety, are held and firmly bound unto the defendants, Beverley T. Crump, H. C. Stuart, Jos. E. Willard and R. T. Wilson in the just and full sum of Ten Thousand Dollars for the payment of which well and truly to be made we do hereby jointly and severally bind ourselves, and each of our successors, firmly by these presents.

Sealed with our seals and dated this 22nd day of May, in the year 1907.

The condition of this obligation is such that

Whereas a restraining order has been made in the above entitled case by the terms of which the defendants, and each of them, are restrained until an application for an interlocutory injunction herein shall be determined, from doing or causing to be done certain acts mentioned in said restraining order; now should said restraining order be dissolved or vacated as having been wrongfully
29 issued, or because the said acts were improperly restrained, then, if the above named Chesapeake Western Railway shall pay, or cause to be paid all damage caused by the issue of said restraining order, and the costs of this cause in connection therewith,

then this obligation to be null and void, otherwise to be and remain in full force and effect.

In Testimony whereof the parties hereto have caused these presents to be duly signed in their respective nams and their respective seals to be hereunto affixed, duly attested, this 22nd day of May in the year 1907.

[Seal of the Chesapeake Western Railway.]

CHESAPEAKE WESTERN RAILWAY,
By ROBERT McM. GILLESPIE, *President.*

Attest:
W. H. HALL, *Secretary.*

[Seal of The United States Fidelity & Guaranty Co.]

THE UNITED STATES FIDELITY & GUARANTY COMPANY,
By E. LESLIE SPENCE, JR.,
Attorney in Fact.

Approved as a full compliance with the provision of the restraining order entered in this cause on the 1st day of June, 1907, requiring the giving of a bond.

J. C. PRITCHARD,
U. S. Circuit Judge.

June 1st, 1907.

30 *Chancery Subpœna.*

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

The President of the United States of America to Beverley T. Crump, Henry C. Stuart, Joseph E. Willard, individually and as constituting the State Corporation Commission of Virginia, and R. T. Wilson, Clerk of the State Corporation Commission of Virginia, Greeting:

We command you, and every one of you, that you appear before our judges of our Circuit Court of the United States of America, for the Eastern District of Virginia, at the Court Room in the Custom House in the City of Richmond, in said District, on the first Monday in the month of July next, to answer the Bill of Complaint of Chesapeake Western Railway this day filed in the Clerk's Office of said Court, in said City of Richmond, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the Eastern District of Virginia to execute:

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond aforesaid;

this 4th day of June, in the year of our Lord one thousand
31 nine hundred and seven, and of our Independence the 131st.

[Seal of United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY, *Clerk,*
By R. E. POWERS,
Deputy Clerk.

MEMORANDUM.—The above-named defendants are notified that unless they enter their appearance in the Clerk'- Office of said Court, at Richmond aforesaid, on or before the day to which the above writ is returnable, the Complaint will be taken against them as confessed, and a decree entered accordingly.

JOSEPH P. BRADY, *Clerk,*
By R. E. POWERS,
Deputy Clerk.

Marshal's Return.

Executed June 5th, 1907, by delivering in person to R. T. Wilson, Clerk of and to Henry C. Stuart, Joseph E. Willard and Robert R. Prentis members of, and constituting the State Corporation Commission of Virginia, (the said Robert R. Prentis being the successor in office of Beverley T. Crump within named), at the office of the said State Corporation Commission of Virginia, in the city of Richmond, Va., each a true copy of the within subpœna together with a certified copy of the Bill of Complaint filed in this cause.

MORGAN TREAT,
United States Marshal,
By M. J. ENRIGHT, *Deputy.*

32 *Joint and Separate Answer of Defendants to Rule to Show Cause Why a Temporary Injunction be Not Awarded.*

Filed June 27th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

CHESAPEAKE-WESTERN RAILWAY, Complainant,

v.

BEVERLEY T. CRUMP, H. C. STUART, and JOSEPH E. WILLARD (Individually and as Constituting the State Corporation Commission of Virginia) and R. T. WILSON (Clerk of the State Corporation Commission), Defendants.

Joint and Separate Answer of said Defendants to a Rule to Show Cause Why a Temporary Injunction be Not Awarded.

The joint and separate answer of the above named defendants to a rule, heretofore awarded in this cause and duly served upon
33 them, requiring them, and each of them, to show cause, before this court, in the United States court-room at Asheville, North Carolina, at 10 o'clock a. m., on the 27th day of June, 1907, why an injunction *pendente lite*, as prayed in the bill of the above named plaintiff, should not be issued.

These respondents (saving and reserving to themselves, jointly and separately, the right to all just and proper exceptions and defenses which they, or any of them, have, or may have, to this cause, either as to the form or as to the substance thereof, and without waiving any valid objection, or objections, which they, or any of them have, or may have, to the jurisdiction of this Honorable Court in this cause, but, on the contrary, expressly denying any such jurisdiction), for answer to said Rule, say:

First. That said city of Asheville, in the State of North Carolina, was and is beyond the territorial jurisdiction of this Honorable Court; and, therefore, as said defendants are advised and respectfully insist, this Honorable Court cannot lawfully assemble, convene, sit, receive or hear answers, motions or pleadings of the litigants in this cause, nor take any action whatever therein, at the said city of Asheville, and that this Honorable Court, and each of the Honorable Judges thereof, was and is without jurisdiction to issue said Rule, or any Rule whatsoever, returnable before this Honorable Court at said city of Asheville; and said defendants are advised and respectfully insist that, for these reasons, said Rule was and is void and of no effect, and that these defendants ought not, nor, ought any of them, to be held or required to further answer the same.

Second. That the said defendants, Beverley T. Crump, H. C. Stuart, Joseph E. Willard, and R. T. Wilson, have not, nor hath either of them, any personal, private or individual interest in, or connection with, the subject matter of this suit; but, on the contrary,

none of them ever was interested therein, or connected therewith, except in his public and official capacity and character, as
34 follows: The said Crump, Stuart and Willard, at the time of the institution of this suit, constituted the State Corporation Commission of Virginia, a Department of the Government of that State, as hereinafter more fully set forth, and the said R. T. Wilson was the Clerk of said Commission; and it is only in their respective public and official characters or capacities as Members and Clerk of said Commission that said defendants, or any of them, ever were interested in, or connected with, the subject matter of this suit—the acts, against which an injunction is prayed for in the Bill, being acts which could not possibly be performed by said defendants, or any of them, except in their said official capacities or characters, and not otherwise. The said State Corporation Commission is one of the principal Departments of the Government of the State of Virginia, and was created and established, and its functions, powers, duties and methods of procedure prescribed and provided for, by the Constitution and Statutes of said State, as will more fully appear from the One Hundred and Fifty-fifth Section, and the One Hundred and Fifty-sixth Section of the Constitution of the said State, and from the Act of the General Assembly of said State, entitled:

"An Act to put into effective operation the provisions of the Constitution relating to the creation, appointment, and organization of the State Corporation Commission, its jurisdiction, powers and duties; the qualification of its members and officers thereof, their appointment and salaries; the location of its offices and places and times of its public sessions; *its writs, processes, orders, findings and judgments; appeals from its orders, findings, and judgments and its expenses, &c.*",

which was approved April 15th, 1903; of which said constitutional provisions and statute, complete copies, duly certified by the Secretary of the Commonwealth of Virginia, under the Lesser Seal of said Commonwealth, are filed, and prayed to be taken and read
35 by this Honorable Court, along with, and as parts of, this answer, said copies being marked, respectively, "Defendants' Exhibit No. 1", and "Defendants' Exhibit No. 2". The said constitutional provisions and statute, as set forth in said copies thereof, together with two other statutes of said State, of which true copies, similarly certified, are herewith filed, marked respectively, "Defendants' Exhibit A", and "Defendants' Exhibit B", and prayed to be taken and read as parts of this answer, are (as set forth in said certificates of the Secretary of the Commonwealth attached to said copies) still in full force and effect, and have been so continually since prior to January 1st, 1904, and these defendants aver that they represent the entire constitutional, and statutory, provisions of the State of Virginia on the subject, in effect from January 1st, 1904, to the present time. From these constitutional, and statutory, provisions it will clearly appear, as these defendants respectfully submit, that (except in certain cases of mandamus or prohibition) said State Corporation Commission has no more power, under the laws of Virginia, of suing or being sued, or of pleading or of being impleaded,

in any court of law or chancery, than has the General Legislature, or Supreme Court of Appeals, of that State. In view, therefore, of the matters and things set forth and referred to in this Clause Second of their Answer to said Rule, these defendants are advised and respectfully insist, that this suit is such a suit against the State of Virginia, as this Honorable Court was, and is, without jurisdiction to entertain, or to enter any order or decree, or to take any other action therein, except to dismiss the same; and these respondents, therefore, respectfully insist that they ought not to be held or required to further answer the same.

Third. That, in the said proceedings before the State Corporation Commission of Virginia, in which said order of April 27th, 1907, was entered, the Commonwealth of Virginia was required by law to be the plaintiff, and, as a matter of fact, was the plaintiff therein, both in form and in substance; that, by the said Constitution and laws of Virginia, an appeal can be taken from said order of
36 April 27th, 1907, to the Supreme Court of Appeals of Virginia, by the Commonwealth of Virginia, as appellant, or it can be taken by the said plaintiff herein, as appellant, in which latter case, however, it is provided and required by the said Constitution and laws of Virginia, that the said Commonwealth of Virginia must be made the appellee; and these defendants are advised and respectfully insist that this proceeding now here pending, to suspend and set aside, or, at any event, to review the said order of April 27th, 1907 (in which the Commonwealth of Virginia is plaintiff, as aforesaid, from which the said Commonwealth of Virginia may take an appeal, as aforesaid, and from which the said plaintiff herein can also take an appeal, as aforesaid, but only by making the said Commonwealth of Virginia the appellee therein), is in substance and effect such a suit against the Commonwealth of Virginia as this Court is without jurisdiction to entertain; therefore, and for this reason also, these respondents are advised and respectfully insist that this Honorable Court was, and is, without jurisdiction to entertain this suit, or to enter any order or decree, or to take any other action herein, except to dismiss the same; and these respondents, therefore, respectfully insist that they ought not to be held or required to further answer the same.

Fourth. That, on the first day of June, 1907, the said Beverley T. Crump, who, up to that time, had been a Member, and the Chairman of the said State Corporation Commission of Virginia, did (pursuant to his previous resignation) retire from said Commission and cease to be the Chairman, or a Member thereof; that, thereupon, his place as a Member of said Commission was forthwith filled by the Honorable Robert R. Prentis, who had been duly appointed, according to law, by the Honorable Claude A. Swanson, Governor of Virginia, to fill the vacancy caused by the said resignation of said defendant Crump, and who has duly qualified as a Member of said Commission according to law; that, upon so taking office as a Member of said Commission, the said the Honorable Robert R. Prentis, was,
by the Members of said Commission, duly elected, according
37 to law, Chairman of said Commission, and forthwith qualified as such, since which time, to-wit, since the first day of June,

1907, the said Commission has continuously been, and still is, composed of the said the Honorable Robert R. Prentis and said defendants Stuart and Willard, as the sole Members thereof, the said Prentis being the Chairman of said Commission, as aforesaid; that said Crump, having, on June 1st, 1907, ceased, as aforesaid, to be a Member of the said Commission, has not been at any time since the 1st day of June, 1907, in any manner whatsoever, connected with said Commission, and, therefore, is no longer interested in, or in any way connected with, the subject matter of this suit; and said defendant Crump, having, by said termination of his connection with said Commission, become incapable of performing, or of, in any manner, controlling or participating in, any of the acts against which said injunction is prayed for, he is advised and respectfully insists that, in any event, this suit should be no longer maintained as to him, and that he should accordingly be hence dismissed as one of the defendants herein.

Fifth. That the said defendants have not, nor have any of them, any personal, private or individual interest in or connection with, *with* the subject matter of this suit, but are only interested therein, or connected therewith, insofar as they constitute the State Corporation Commission of Virginia and the Clerk of said Commission; that the said State Corporation Commission of Virginia was created and established, and its functions, powers, duties and procedure prescribed and provided for, by the Constitution and Statutes of said State, as will more fully appear from the One Hundred and Fifty-fifth Section, and the One Hundred and Fifty-sixth Section, of the Constitution of said State, and from the Act of the General Assembly of said State, entitled:

"An Act to put into effective operation the provisions of the Constitution relating to the creation, appointment and organization of the State Corporation Commission, its jurisdiction, powers
38 and duties; the qualification of the Members and officers thereof, and their appointment and salaries; the location of its offices and places and times of its public sessions; *its writs, processes, orders, findings and judgments; appeals from its orders, findings, and judgments, and its expenses, &c.,*"

which was approved April 15th, 1903; of which said constitutional provisions and statute, complete copies, duly certified by the Secretary of the Commonwealth of Virginia, under the Lesser Seal of said Commonwealth, are (as heretofore stated) filed, and prayed to be taken and read by this Honorable Court, along with, and as parts of, this Answer—said copies being marked, as aforesaid, "Defendants' Exhibit No. 1" and "Defendants' Exhibit No. 2," respectively; that the said constitutional, and statutory, provisions, as set forth in said copies thereof, are, together with said other two statutes of said State, of which true copies, similarly certified, are (as heretofore stated) filed with this answer, marked, respectively, "Defendants' Exhibit A" and "Defendants' Exhibit B," and prayed to be taken and read as parts of this Answer, (as set forth in said certificates of the Secretary of the Commonwealth, attached to said copies) still in force and effect, and have been in full force and effect continuously since prior

to the first day of January, 1904, and these defendants aver that they represent the entire constitutional, and statutory, provisions of the State of Virginia on the subject, in effect from the first day of January, 1904, to the present time; that, on the 6th day of October, 1903, Rules of Order, Practice and Procedure before the said State Corporation Commission of Virginia were duly made and prescribed by said Commission and entered upon the records of its proceedings and printed and distributed according to law; that a full, complete and true copy of said Rules of Order, Practice and Procedure, as they have existed since the first day of January, 1904, to the present time, and still exist, duly certified by the Chairman and Clerk of said Commission under the seal of said Commission, and further veri-
39 fied by the affidavit of said R. T. Wilson, is filed, and prayed to be taken and read by this Honorable Court, along with, and as a part of, this Answer—the said copy being marked "Defendants' Exhibit No. 3"; that the proceedings before the said State Corporation Commission which are referred to in the plaintiff's Bill, and in which the said order in respect to the passenger rates of the plaintiff was entered by the said Commission on the 27th day of April, 1907, were taken and had before the said Commission in strict conformity, in every respect, with the provisions hereinbefore mentioned of the Constitution and Statutes of the State of Virginia, and with the said Rules of Order, Practice and Procedure before the said State Corporation Commission; that the initial step in said proceedings was, as set forth in the Bill herein, a Notice, of which the following is a copy:

"*Notice.*

Office of the State Corporation Commission.

RICHMOND, VA., 31*st Day of July*, 1906.

To the Several Steam Railroad Companies Doing Business in Virginia and all Persons Interested:

Take notice that the State Corporation Commission will, in the city of Richmond, on Thursday, the first day of November, 1906, at 12 o'clock, noon, in accordance with the authority conferred by the Constitution of Virginia and the statutes enacted by the General Assembly of Virginia pursuant thereto, hear and consider any objections which may be urged against a rule, regulation, order or requirement of the Commission fixing and prescribing a maximum rate of charge of two cents per mile for the transportation of passengers over the line of any railroad company in this State, operated by steam, between points within the State of Virginia, said maximum rate to be observed whether the transportation be entirely over the line of one railroad company, or joint transportation over the
40 lines of two or more companies; and whether the contract for transportation of a passenger or passengers be evidenced by an ordinary ticket between stations, by a mileage book or otherwise; the Commission to have, as authorized by law, the power and authority from time to time, and as often as circumstances may require,

to change or revise the rate, or, by rules, regulations and requirements, to provide for the more convenient and expedient putting into effect and proper observance of said maximum rate. At the said hearing and consideration of the said maximum rate of two cents per mile, the method, time and extent of promulgation and putting into effect of the same will be heard and determined by the Commission, to the end that a maximum rate for passenger transportation may be put into effect and be made applicable to all steam railroad companies doing business in Virginia, and be properly observed by them in the transportation of passengers.

BEVERLEY T. CRUMP, *Chairman;*
H. C. STUART,
JOSEPH E. WILLARD,
Commissioners."

That said Notice was forthwith duly published according to law once a week, for four consecutive weeks, in the Times-Dispatch, a newspaper of general circulation published in the city of Richmond; that, in accordance with said Notice the said plaintiff herein appeared before the said State Corporation Commission of Virginia at the time and place fixed by said Notice, to-wit, on the first day of November, 1906, at 12 o'clock, noon, at Richmond, Virginia, and filed its Answer, a copy of which is filed with the Bill in this cause, marked "Exhibit C"; that in its said Answer, as will be more fully seen from said "Exhibit C" with the plaintiff's Bill herein, the following five grounds of defense were set up and relied upon (they being the identical grounds (with two or three immaterial exceptions)
41 upon which the plaintiff here seeks to attack and overthrow the order of the Commisison in that proceeding), to-wit:

1st. That, because of the fact that the said Corporation Commission was clothed with Legislative, Judicial and Executive powers, its dealings with the said plaintiff herein, in respect to the regulation of its rates, would not amount to *due process of law;* and that, for the same reason, said plaintiff herein, if compelled to submit to the jurisdiction of said Commission in the premises, would be denied the *equal protection of the laws;*

2nd. That, by reason of certain previous Acts of the General Assembly of Virginia, that State could not, through any instrumentality, regulate the rates of said plaintiff herein, under existing conditions, without *impairing the obligation of the State's alleged Contract with said Company;*

3rd. That *any* regulation of the intra-state passenger rates of said Company would, of necessity, amount to a regulation of the inter-state passenger rates of said Company, in violation of the *Commerce Clause* of the Constitution of the United States;

4th. That the suggested rate would, if imposed upon the Company, be *confiscatory of its property;* and

5th. That the existing rates of the Company were *fair and reasonable.*

That, thereupon, the said Commission entered into a most elaborate consideration and investigation of each of the questions of law and of fact raised by said Notice and said Answer; that, as

will more fully appear by the affidavit of the said R. T. Wilson, Clerk of said Commission, herewith filed, and prayed to be
42 taken and read by this Honorable Court along with, and as a part of this Answer, marked "Defendants' Exhibit No. 4," the Commission spent many days in the hearing of the matters involved in said Notice and Answer, at which hearing the said complainant herein appeared and made an elaborate defense, introducing testimony covering several thousand pages of record; that said hearing was not concluded until the said plaintiff herein had, through its counsel, announced that its case was complete; that, after the said hearing had concluded, to-wit, on the 27th day of April, 1907, said State Corporation Commission entered its order in said proceedings fixing the maximum rates of the said plaintiff herein for the transportation of passengers in its intra-state Virginia business, which order is set out at length in the plaintiff's Bill, but, at the time of entering said order, and along with the same, and as a part of the official and legal record of said proceedings, the said Commission filed an elaborate opinion which thereby became, and was, and still is (in accordance with law), a part of the official record of said proceedings, a true copy of which opinion will be found in the copy of said official record hereinafter filed, marked "Defendants' Exhibit No. 5," and is prayed to be taken and read by this Honorable Court, along with, and as a part of this Answer; that, in accordance with the requirements of law, and of the uniformly established custom and practice in all such cases, a written record of all the proceedings (except the evidence) in said matter, from its inception up to and including said order of April 27, 1907, was duly made in the regular official "judicial order book" of the Commission by its Clerk and signed by its Chairman in exactly the same manner in which records of their proceedings are made, verified and preserved by the ordinary judicial courts of the State of Virginia; that the said "judicial order book" of the Commission and its contents are public records under the laws of Virginia just as are the order books of ordinary judicial courts of that State—said record, however, in its present shape does not now include the evidence in the cause, but all the documents and all oral testimony (of which latter
43 a complete stenographic report is preserved by the Commission) constituting such evidence *is* in the custody of the Commission, and preserved by it to be hereafter made a part of the record and as such to be duly certified by the Commission along with the other parts of the record, to the Supreme Court of Appeals of Virginia, upon the taking of an appeal from said order of April 27, 1907, in case such appeal be taken; that a complete and true copy of the record of said proceedings, as it appears upon said judicial order book of the Commission (verified by the affidavit thereto attached of said R. T. Wilson, Clerk of said Commission) is herewith filed, marked "Defendants' Exhibit No. 5," and is prayed to be taken and read by this Honorable Court along with, and as a part of, this Answer; that, as above stated, all of the documentary evidence, and a full stenographic report of all the oral testimony adduced in said proceedings—amounting to several thousand pages—*is* preserved by the Commission in its archives ready to be made a part of the record

of said proceedings and certified as such, by the Commission, according to law, along with the residue of the record of the case, to the Supreme Court of Appeals of Virginia, upon an appeal to that tribunal from the said proceedings before said Commission, including its said final order therein of April 27, 1907, which appeal, either the Commonwealth, or said plaintiff Company herein, may, as aforesaid, under the express provisions of the laws of Virginia, take as of right, but which neither has yet taken nor applied for; and said defendants say that the said State Corporation Commission of Virginia was, and is, and always has been (particularly with respect to the said order of April 27, 1907, and the said proceedings in which said order was entered), a "court" of the State of Virginia, within the true meaning, purport, intent and purview of Section 720 of the Revised Statutes of the United States, which provides, that,

"A writ of injunction shall not be granted by any court of the United States to stay proceedings in *any* court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in Bankruptcy";

44

and that this suit is not a case within the exception specified in the said Section 720 just quoted. Therefore, and because of the matters and things set forth or referred to in this Fifth Clause of this Answer, these defendants are advised and respectfully insist that this Honorable Court is without any jurisdiction to entertain this suit, or to enter any decree or order, or to take any other action, herein (save to dismiss the suit), because, as these defendants insist the sole object of this suit, and the sole ground upon which the equitable interference of this court is prayed, is the obtaining of an injunction which, if obtained, would be, (as these defendants are advised and respectfully insist) in violation of the express provisions of the said statute of the United States last above mentioned; and these respondents, therefore, respectfully insist that they ought not to be held or required to further answer in this cause;

Sixth. That, under the Constitution and laws of the State of Virginia, as set forth in the Exhibits herewith filed, the State Corporation Commission of Virginia is expressly made a judicial court for the enforcement, by its own appropriate process, of compliance with the requirements of its said order of April 27th, 1907; and it is not requisite, necessary nor appropriate for the said Commission to bring suit, nor has it the power of suing, in any other tribunal, for the enforcement of any of its orders, nor is the said Commission, in the supervision, regulation or control of Railroad Companies, authorized, to prosecute or defend litigation of any kind, in any tribunal, for any purpose. Therefore, and for this reason also, these defendants are advised and respectfully insist that the injunction prayed for in the plaintiff's Bill to restrain the said Commission and its members from taking any steps to enforce the said order of April 27th, 1907, would, if granted, have only the effect of restraining and enjoining a judicial court of the State of Virginia from enforcing by its own appropriate process, compliance with an order theretofore issued by it within the limits of its jurisdiction, and from which no appeal lies to this court, and over which

45

this court has no power of review; these respondents, therefore, respectfully insist that this Court was, and is, without jurisdiction to entertain this suit, or to enter any order or decree, or to take any other action herein, except to dismiss the same; and these respondents, therefore, respectfully insist that they ought not to be held or required to further answer the same.

Seventh. That no persons are, or can be, impleaded in this cause with whom the plaintiff herein may legally or properly litigate the question of the reasonableness or validity of the rates imposed upon the plaintiff by said order of April 27th, 1907. These defendants have not, nor have any of them, any personal, private, or individual interest in that question, which would authorize them as individuals to litigate the same, nor are they, or any of them, by law, charged with the duty, or clothed with the power, in any official or public capacity or character, of conducting or defending any such litigation in any court whatsoever; the said State Corporation Commission, as a public body, in the exercise of its power under said constitutional provisions, is wholly without any power or authority of law to prosecute or defend suits, actions, or proceedings of any kind, or to appear as a suitor for any purpose, in any court whatsoever,—as much so as is the Supreme Court of Appeals, or the General Assembly, of Virginia; and, finally, the Commonwealth of Virginia has not consented to be impleaded in this Honorable Court for the purpose of litigating the question of the reasonableness or legality of the said rates prescribed by the said order of April 27th, 1907. Therefore, for this reason also, these defendants are advised and respectfully insist, that this Honorable Court is without jurisdiction to entertain this suit, or to enter any order or decree, or to take any further action therein, except to dismiss the same;
46 and these respondents, therefore, respectfully insist that they ought not to be held or required to further answer the same.

Eighth. That before said hearing was concluded by said Commission in said proceedings, to-wit, on March 16th, 1907, the Commission gave a written notice to each of the counsel, of record in said proceedings, for the Railroad Companies which had appeared therein, including the plaintiff herein, said notice being in the form of a letter addressed by said Commission to each of said counsel by name, of the body of which letter the following is a copy:

"GENTLEMEN: We are addressing this communication to all the counsel of record in the proceedings before the Commission against the steam railroads of the State, relative to prescribing a maximum passenger rate of two cents per mile, in order to notify all counsel as follows: This proceeding will be called on Wednesday, the 27th inst. at eleven o'clock in the morning, in the court room of the Commission, at which time the hearing will be resumed and continued until completed. Counsel for the Commonwealth will be expected to be fully prepared to submit to the Commission all evidence, oral or documentary, which they may desire to put in on behalf of the Commonwealth. The defendant railroad companies will be expected to be prepared to put in any further evidence, or bring before the Commission any further fact which they may desire the Commission to consider in this proceeding. At the close of the evidence on both

sides, the Commission will be prepared to hear argument on the issues arising in this proceeding, to the end that, at the sitting of the Commission, commencing on the 27th day of March, this proceeding will be carried on consecutively from day to day until concluded and submitted to the Commission for its consideration and action."

47 That accordingly, on March 27th, 1907, the Commission again assembled in public session for the final hearing of said proceedings, and after the Chairman of the Commission had read aloud at said session of the Commission, the above notice, the further taking of evidence in said proceeding was resumed, and the hearing by the Commission was not concluded until the counsel for the said plaintiff herein had announced that his client had nothing more to say or offer in its behalf; and these defendants are advised and respectfully insist, that whether the said State Corporation Commission of Virginia be regarded as a judicial, a legislative or an administrative tribunal, or as a combination of any two or more of such bodies, yet the said proceedings, which resulted in the said order of April 27th, 1907, and which are the regular proceedings prescribed by the Constitution and laws of the State of Virginia and the regularly established practice of the said Corporation Commission in all such cases, constituted due process of law as to the said plaintiff herein, within the true intent and meaning of the Fourteenth Amendment of the Constitution of the United States; and these respondents are further advised and respectfully insist that the said plaintiff herein, having been duly made a party to said proceedings, and having appeared and made therein a full defence and submitted the matter to the Commission for its decision and action (as, these defendants aver, the said plaintiff herein did do), and the said Commission, having, thereupon, decided the questions involved in said proceedings and so submitted to it for decision, and having taken action upon the matter as set forth in its said order of April 27th, 1907, the said plaintiff herein thereupon became, was, and is, bound by that decision and action of the Commission and cannot now ignore nor disregard the same, but must appeal from it in the manner provided by law, or else abide by, and obey, it; and these defendants are further advised and respectfully insist, that this Honorable Court, being without jurisdiction to entertain an appeal from said order of April 27th, 1907, is equally without jurisdiction to ignore,

48 disregard, reverse, or overrule the same, and that to enjoin the enforcement of that order by the tribunal which entered it and which, by the laws of Virginia, is alone charged with the enforcement of that order, is tantamount to, and in substance, and effect, the same as, to ignore, disregard and overrule that order; and these defendants aver that every question of law or fact involved in this suit (except only the question of the jurisdiction of this Court) was directly involved in the said proceedings before said Commission, which culminated in said order of April 27th, 1907, and that (with two or three immaterial exceptions) every such question was expressly raised and pressed in the said proceedings by said plaintiff herein, and was considered and decided, expressly or by necessary implication, by the said Commission in the said proceedings; and

these defendants aver that there was no evidence, or defence, or right, or matter, of any kind (whether legal or equitable, whether depending upon questions of law or of fact, or both, and whether arising under the Constitution and laws of the United States or otherwise), which the plaintiff herein could assert or rely upon in its behalf in this suit (if it should be proceeded with as prayed for in the plaintiff's Bill), that the said plaintiff herein did not have both the express and plain legal right to introduce and rely upon, and the fullest and fairest opportunity of introducing and relying upon, in its behalf, throughout said proceedings before said Commission which culminated in said order of April 27th, 1907, of which opportunity the said plaintiff herein most freely availed itself, without limitation or hindrance; and these defendants say, that if this suit could legally proceed, its future proceedings would and could be nothing else than a repetition of exactly the same hearing already had, upon the same evidence already adduced, and upon the same questions already decided, in said proceedings before said Commission culminating in said order of April 27th, 1907; and these defendants further aver, that the Constitution and laws of the State of Virginia make full, ample and liberal provision for an appeal of right by the said plaintiff herein, to the Supreme Court of Ap-
49 peals of Virginia, from the said decision and action of the said State Corporation Commission, and for the suspending of the operation of said order of April 27th, 1907, pending the decision of such an appeal; yet these defendants say, that the said plaintiff herein has not taken, nor applied for, any such appeal, although there is nothing whatever to prevent, hinder, delay, or obstruct its applying for and obtaining such an appeal and in addition thereto, a supersedeas (for which, ample and liberal provision is also made by law) suspending the operation of such order pending the decision of such appeal; and these defendants are advised that, if, upon the decision of any such appeal, the said Railway Company considers that any of the rights secured to it under the Constitution and laws of the United States have been ignored or violated, or that any question, arising under the Constitution and laws of the United States and involved in said proceedings or appeal, has been erroneously decided to its detriment, by the said Supreme Court of Appeals of Virginia upon such appeal, then, and in that event, the Constitution and laws of the United States provide a plain, simple, adequate, perfect and complete remedy for the said plaintiff herein, in the form of an appeal to the Supreme Court of the United States from any such adverse decision by the said Supreme Court of Appeals of Virginia upon such appeal from the said Corporation Commission; therefore, and for these reasons also, these respondents are further advised and respectfully insist that this Honorable Court is without jurisdiction to entertain this suit, or to enter any order or decree, or to take other action herein, except to dismiss the same; and these respondents, therefore, respectfully insist that they ought not to be held or required to further answer the same.

Ninth. That the said proceedings before the State Corporation Commission of Virginia, in which said order of April 27th, 1907, was entered, are not yet completed, but are still pending before that

body; and these defendants are advised and respectfully insist that if said Commission be considered and treated as a court, within
50 the purview of said Section 720 of the Revised Statutes of the United States, then, and in that event, this Court is, as hereinbefore pointed out, without jurisdiction to entertain this suit, or to grant said injunction prayed for in the Bill of the plaintiff herein; and that if, on the other hand, the said Commission be regarded and treated as a legislative body, then, and in that event, this Court is equally without jurisdiction to enjoin the proceeding of such a body in the course of the enactment of a rate regulation, until such enactment is completed; and these defendants aver that, under the Constitution and laws of Virginia, the rate regulation set forth in said order of April 27th, 1907, is not a completed enactment and will not be, unless and until the publication thereof, as directed by said order, is completed, such publication being a part and parcel of the proceedings necessary for the complete enactment of the said rate regulation; therefore, and for these reasons also these defendants are advised and respectfully insist, that this Honorable Court was, and is, without jurisdiction to entertain this suit or to enter any order or decree, or to take any other action herein, except to dismiss the same; and these respondents, therefore, respectfully insist that th-y ought not to be held or required to further answer the same.

Tenth. That the said proceedings before the State Corporation Commission, which culminated in, and included, said order of April 27th, 1907, were and are exactly the same, both as to the tribunal, and as to the methods and forms involved, as are applicable, under the laws of that State, to all cases of a similar character, and were not different in any respect in the case of the plaintiff herein, than they were, are, and would be, under the laws of Virginia, in the case of any and every other railroad company in the State of Virginia whose rates are sought or attempted to be regulated by law; wherefore, these defendants are advised and respectfully insist that neither in the said proceedings, nor in any of them, was the said plaintiff herein denied the equal protection of the laws.

51 *Eleventh.* That, under the Constitution and laws of Virginia, as set forth in the Exhibits filed with this Answer, the plaintiff herein has a plain, complete, prompt and adequate remedy at law for the matters of which it complains in this Bill, in this, that under the said Constitution and laws, the plaintiff herein is given an appeal as of right from the said order of April 27th, 1907, to the Supreme Court of Appeals of Virginia, and is also given the right to have the operation of said order appealed from suspended, pending the decision of said appeal; and, under the Constitution and laws of the United States, the said plaintiff herein is given the further right of an appeal to the Supreme Court of the United States from any adverse decision of the said Supreme Court of Appeals of Virginia in such matters, upon any question arising under the Constitution and laws of the United States. Therefore, and for this reason also, these defendants are advised and respectfully insist, that this Honorable Court was, and is, without jurisdiction to entertain this suit or to enter any order or decree, or to take any action herein, except to dismiss the same; and these respondents, therefore, respectfully insist

that they ought not to be held or required to further answer the same.

Twelfth. That, as will be clearly seen from the constitutional and statutory provisions on the subject hereinbefore set forth and referred to, the State Corporation Commission of Virginia is radically and essentially different, in its character and constitution from the Railroad Commissions (under whatsoever name designated) of any other State in the Union, and from the Interstate Commerce Commission, and therefore the rules and principles of law applicable to injunctions granted by Federal Courts against regulations promulgated by the Railroad Commissions of other States, or to proceedings therein upon regulations prescribed by the Interstate Commerce Commission, can have no proper application to this case. The principal characteristic peculiar to the State Corporation Commission of Virginia is this, that it is, by the Constitution of that State, clothed
52 with all the powers, and endowed with the full nature, of an ordinary judicial court, although it has other powers and functions in addition thereto; it sits in a fixed and public place; it keeps a written public record of its proceedings, which has all the characteristics of a court record; it issues its own writs and processes, and has them served and executed by its own executive process and not otherwise; and can compel the attendance and testifying of witnesses and the production of documents; it can enter no order nor make any valid regulation against a party without first citing it to appear and otherwise proceeding against it by due process of law; it is expressly given all the powers of a court of record; it can impose fines and render, and enforce by execution, judgments therefor which are recordable, and become liens like judgments of other courts; it can issue and enforce writs of mandamus and injunction; it can punish for contempt; it can enforce its own judgments and orders by its own executive process; and not otherwise and none of its judgments or orders can be collaterally attacked in any court of said State; from all of its judgments and orders appeals lie to the Supreme Court of Appeals of the State; but to that Court only; writs of mandamus and prohibition may be issued to it by the Supreme Court of Appeals—in short, there is not an essential characteristic of an ordinary judicial court which the State Corporation Commission of Virginia does not possess. Exactly the same due process of law which would be observed, and the same procedure which would be pursued, in an ordinary judicial court of other States, or of the United States, in a suit by an ordinary Railroad Commission, or by the Interstate Commerce Commission, against a railroad company to compel the observance of an *actually promulgated* rate regulation, just *such* process is observed, and just *such* procedure pursued, by the Virginia State Corporation Commission, *in limine*, with reference to a *suggested* rate regulation, in order that its fairness and reasonableness may be judicially tested, while its wisdom and propriety is being legislatively considered, *before* its promulgation and before any injury can be done or penalty incurred, rather
53 than *afterwards*. In such a proceeding, the company has exactly the same rights and protection, and may assert and rely upon exactly the same matters of law and of fact, and upon each and

every of them, that it could have asserted or relied upon before an ordinary court in a proceeding taken *after* the promulgation of the rate; and from the decision by the Commission of every *judicial* question involved in such proceeding, an appeal of right may be taken (with supersedeas, if desired) by the company affected, to the Supreme Court of Appeals of the State, and thence, upon any Federal question, to the Supreme Court of the United States. Thus it will be seen that, under the Virginia law, all questions involving the legality of a given rate regulation, are to be tried and judicially determined *before* the rate goes into effect, rather than *afterwards*, and are triable, in the first instance, by a tribunal especially suited for considering and adjudging the reasonableness of rates, the members of which tribunal are experts in such matters, rather than by an ordinary judicial tribunal, whose machinery was not designed for such work, and whose judges and masters in chancery rarely, if ever, have occasion to consider such matters. After this *nisi prius* trial, the proceedings in Virginia are the same as elsewhere, that is to say, that the opportunity for appeal from the decision of such *nisi prius* court, upon any judicial question, to the Supreme Court of the State, and thence, upon any Federal question, to the United States Supreme Court, is, in Virginia, the same as, or rather more liberal than, elsewhere. The *nisi prius* proceedings in Virginia are none the less judicial proceedings because they are conducted before a tribunal especially constituted, and peculiarly fitted, for considering and disposing of such matters—its proceedings partaking, in every particular, of all the essential elements of due process of law.

For all of the foregoing reasons, these defendants are advised and again respectfully insist, that this Honorable Court is without jurisdiction to entertain this suit, or to enter any judgment or order, or to take any other proceedings herein except to dismiss the same;
54 wherefore, these defendants respectfully pray that this suit be dismissed, and that they be allowed to go hence without day, and to recover their costs against the plaintiff herein.

BEVERLEY T. CRUMP,
H. C. STUART.
JOS. E. WILLARD.
By Counsel.
R. T. WILSON.

WILLIAM A. ANDERSON,
A. CAPERTON BRAXTON,
p. d.

55 STATE OF VIRGINIA,
City of Richmond, To-wit:

This day Beverley T. Crump, to me personally known, appeared in person before me, the undersigned, a Notary Public in and for the City aforesaid, in the State of Virginia, and, before me, in my said City, subscribed his name to the foregoing answer, and made oath, then and there, that all of the statements of fact contained in said answer are true, of his own knowledge, except as to those matters

therein stated on information and belief, and, as to these matters, he believes them to be true.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, this, the 20th day of June, 1907.

[NOTARIAL SEAL.] JNO. S. EGGLESTON,
Notary Public.

56 DEFENDANTS' EXHIBIT A.

(Section 19 of Chapter II of An Act Concerning Public Service Corporations, Approved January 18th, 1904.)

19. Any person or corporation aggrieved by anything done or omitted in violation of any of the provisions of this act, by any public service corporation chartered or doing business in this State, shall have the right to make complaint of the grievance and seek relief by petition against such public service corporation before the State Corporation Commission, sitting as a court of record. If the grievance complained of be established, the State Corporation Commission, sitting as a court of record, shall have jurisdiction, by injunction, to restrain such public service corporation from continuing the same and to enjoin obedience to the requirements of this act, and the said commission, sitting as a court of record, shall also have jurisdiction, by mandamus, to compel any public service corporation to observe and perform any public duty imposed upon public service corporations by the laws of this Commonwealth, subject as to any matter arising under this section to the right of appeal to the Supreme Court of Appeals by either party as of right in the mode prescribed by law, but nothing in this section shall be construed to confer any power upon the State Corporation Commission which is forbidden to the courts by section twelve of Chapter four of this act.

COMMONWEALTH OF VIRGINIA:

I, D. Q. Eggleston, Secretary of the Commonwealth of Virginia, and Keeper of the Seals thereof, do hereby certify that the foregoing is a true copy of section nineteen of Chapter II. of an act of the General Assembly of Virginia, entitled "An act concerning Public Service Corporations," approved January 18th, 1904, as the same is published according to law; that said section of said act is still in full force and effect, and has been so continuously since the last-mentioned date.

57 Given under my hand and the Lesser Seal of the Commonwealth, at Richmond, this 25th day of June, in the year of our Lord, nineteen hundred and seven.

[Lesser Seal of the Commonwealth.]

D. Q. EGGLESTON,
Secretary of the Commonwealth and Keeper of the Seals.

58 DEFENDANTS' EXHIBIT B.

AN ACT

To require the State Corporation Commission to fix and prescribe storage, demurrage and car service charges which may be collected by railroad and other transportation companies on freight transported, or to be transported by them, and to be paid by them on freight delayed and cars not promptly furnished or placed by them, with rules and regulations governing same.

Approved May 16, 1903.

1. Be it enacted by the general assembly of Virginia, That from and after the passage of this act power is hereby conferred on the State Corporation Commission of the State of Virginia, and it is required to fix and prescribe a schedule of rates for storage of freight in depots and for demurrage or car service on freight in carload lots, to be charged by railroad and other transportation companies doing business in this State, and to fix the time after the reception of freight at destination at which such charges of storage, demurrage, or car service shall begin, with power to vary the same according to the value and character of the freight stored, the nature of the place of destination, the residence of the consignee, and such other facts as, in its judgment, should be considered in fixing the same.

2. That the State Corporation Commission shall fix and prescribe a schedule of detention charges to be paid by railroad and other transportation companies to the consignee in case of delay in the delivery of freight in carloads or less at destination, or where shipments are held an unreasonable length of time at the station or siding at which they originate, or at any intermediate point, and for carrying freights, express packages, and all other effects by and beyond the place of final destination, without authority from the consignee; and the commission shall also fix and prescribe rules and regula-

59 tions covering the placing of empty cars and a schedule of detention charges to be paid by railroad companies to consignors when cars are not placed for loading in accordance with said rules and regulations after application has been made therefor, when said charges shall, when paid, be in full of any and all claims for damages growing out of such failure: provided, however, that the owner of the freight may, at his election, waive said charges and elect to claim such actual damage as he may have sustained instead of such charges.

3. This act shall be in force from its passage.

COMMONWEALTH OF VIRGINIA:

I, D. Q. Eggleston, Secretary of the Commonwealth of Virginia, and Keeper of the Seals thereof, do hereby certify that the foregoing is a true copy of an act of the General Assembly of Virginia, bearing the title set forth in the caption to the foregoing copy,—approved May 16, 1903,—as the same is published according to law; that said

act is still in full force and effect, and has been so continuously since the last-mentioned date.

Given under my hand and the Lesser Seal of the Commonwealth, at Richmond, this 25th day of June, in the year of our Lord, nineteen hundred and seven.

[Lesser Seal of the Commonwealth.]

D. Q. EGGLESTON,
Secretary of the Commonwealth and Keeper of the Seals.

60 DEFENDANTS' EXHIBIT No. 1.

(Sections 155 and 156, Virginia Constitution.)

SEC. 155. A permanent commission, to consist of three members, is hereby created, which shall be known as the State Corporation Commission. The commissioners shall be appointed by the Governor, subject to confirmation by the General Assembly in joint session, and their regular terms of office shall be six years, respectively, except those first appointed under this Constitution, of whom, one shall be appointed to hold office until the first day of February, nineteen hundred and four, one, until the first day of February, nineteen hundred and six, and one, until the first day of February, nineteen hundred and eight. Whenever a vacancy in the commission shall occur, the Governor shall forthwith appoint a qualified person to fill the same for the unexpired term, subject to confirmation by the General Assembly as aforesaid. Commissioners appointed for regular terms shall, at the beginning of the terms for which appointed, and those appointed to fill vacancies shall, immediately upon their appointments, enter upon the duties of their office; but no person so appointed, either for a regular term, or to fill a vacancy, shall enter upon, or continue in, office after the General Assembly shall have refused to confirm his appointment, or adjourned *sine die* without confirming the same, nor shall he be eligible for re-appointment to fill the vacancy caused by such refusal or failure to confirm. No person while employed by, or holding any office in relation to, any transportation or transmission company, or while in any wise financially interested therein, or while engaged in practicing law, shall hold office as a member of said commission, or perform any of the duties thereof. At least one of the commissioners shall have the qualifications prescribed for judges of the Supreme Court of Appeals; and any commissioner may be impeached or removed in the manner provided for the impeachment or removal of a judge of said court.

61 The commission shall annually elect one of their members chairman of the same, and shall have one clerk, one bailiff and such other clerks, officers, assistants and subordinates as may be provided by law, all of whom shall be appointed, and subject to removal, by the commission. It shall prescribe its own rules of order and procedure, except so far as the same are specified in this Constitution or any amendment thereof. The General Assembly may establish within the department, and subject to the supervision and control, of the commission, subordinate divisions, or bureaus, of

insurance, banking or other special branches of the business of that department. All sessions of the commission shall be public, and a permanent record shall be kept of all its judgments, rules, orders, findings and decisions, and of all reports made to, or by, it. Two of the commissioners shall constitute a quorum for the transaction of business, whether there be a vacancy in the commission or not. The commission shall keep its office open for business on every day except Sundays and legal holidays. Transportation companies shall at all times transport, free of charge, within this State, the members of said commission and its officers, or any of them, when engaged on their official duties. The General Assembly shall provide suitable quarters for the commission and funds for its lawful expenses, including pay for witnesses summoned, and costs of executing processes issued, by the commission of its own motion; and shall fix the salaries of the members, clerks, assistants and subordinates of the commission and provide for the payment thereof; but the salary of each commissioner shall not be less than four thousand dollars per annum. After the first day of January, nineteen hundred and eight, the General Assembly may provide for the election of the members of the commission by the qualified voters of the State; in which event, vacancies thereafter occurring shall be filled as hereinbefore provided, until the expiration of twenty days after the next general election, held not less than sixty days after the vacancy occurs, at which election the vacancy shall be filled for the residue of the unexpired term.

SEC. 156. (*a*) Subject to the provisions of this Constitution and to such requirements, rules and regulations as may be pre-
62 scribed by law, the State Corporation Commission shall be the department of government through which shall be issued all charters and amendments or extensions thereof, for domestic corporations, and all licenses to do business in this State to foreign corporations; and through which shall be carried out all the provisions of this Constitution, and of the laws made in pursuance thereof, for the creation, visitation, supervision, regulation and control of corporations chartered by, or doing business in, this State. The commission shall prescribe the forms of all reports which may be required of such corporations by this Constitution or by law; it shall collect, receive, and preserve such reports, and annually tabulate and publish them in statistical form; it shall have all the rights and powers of, and perform all the duties devolving upon, the Railroad Commissioner and the Board of Public Works, at the time this Constitution goes into effect, except so far as they are inconsistent with this Constitution, or may be hereafter abolished or changed by law.

(*b*) The commission shall have the power, and be charged with the duty, of supervising, regulating and controlling all transportation and transmission companies doing business in this State, in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses therein by such companies; and to that end the commission shall, from time to time, prescribe, and enforce against such companies, in the manner hereinafter authorized, such rates, charges, classifications of traffic, and rules and regulations, and shall require them to establish and maintain all such public service, facilities and conveniences, as may be reasonable and just, which said rates, charges, classifications, rules,

regulations and requirements, the commission may, from time to time, alter or amend. All rates, charges, classifications, rules and regulations adopted, or acted upon, by any such company, inconsistent with those prescribed by the commission, within the scope of its authority, shall be unlawful and void. The commission shall also have the right at all times to inspect the books and papers of all transportation and transmission companies doing business in
63 this State, and to require from such companies, from time to time, special reports and statements under oath, concerning their business; it shall keep itself fully informed of the physical condition of all the railroads of the State, as to the manner in which they are operated, with reference to the security and accommodation of the public, and shall, from time to time, make and enforce such requirements, rules and regulations as may be necessary to prevent unjust or unreasonable discriminations by any transportation or transmission company in favor of, or against, any person, locality, community, connecting line, or kind of traffic, in the matter of car service, train or boat schedule, efficiency of transportation or otherwise, in connection with the public duties of such company. Before the commission shall prescribe or fix any rate, charge, or classification of traffic, and before it shall make any order, rule, regulation or requirement directed against any one or more companies by name, the company or companies to be affected by such rate, charge, classification, order, rule, regulation or requirement, shall first be given, by the commission, at least ten days' notice of the time and place, when and where the contemplated action in the premises will be considered and disposed of, and shall be afforded a reasonable opportunity to introduce evidence and to be heard thereon, to the end that justice may be done, and shall have process to enforce the attendance of witnesses; and before the commission shall make or prescribe any general order, rule, regulation or requirement, not directed against any specific company or companies by name, the contemplated general order, rule, regulation or requirement shall first be published in substance, not less than once a week for four consecutive weeks in one or more of the newspapers of general circulation published in the city of Richmond, Virginia, together with notice of the time and place when and where the commission will hear any objections which may be urged by any person interested, against the proposed order, rule, regulation or requirement; and every such general order, rule, regulation or requirement, made by the commission shall be published at length, for the time and
64 in the manner above specified, before it shall go into effect, and shall also, as long as it remains in force, be published in each subsequent annual report of the commission. The authority of the commission (subject to review on appeal as hereinafter provided) to prescribe rates, charges and classifications of traffic, for transportation and transmission companies, shall be paramount; but its authority to prescribe any other rules, regulations or requirements for corporations or other persons shall be subject to the superior authority of the General Assembly to legislate thereon by general laws; provided, however, that nothing in this section shall impair the right which has heretofore been, or may hereafter be, conferred by law

upon the authorities of any city, town or county to prescribe rules, regulations or rates of charge to be observed by any public service corporation in connection with any services performed by it under a municipal or county franchise granted by such city, town or county, so far as such services may be wholly within the limits of the city, town or county granting the franchise. Upon the request of the parties interested, it shall be the duty of the commission, as far as possible, to effect, by mediation, the adjustment of claims, and the settlement of controversies, between transportation or transmission companies and their patrons.

(*c*) In all matters pertaining to the public visitation, regulation or control of corporations, and within the jurisdiction of the commission, it shall have the powers and authority of a court of record, to administer oaths, to compel the attendance of witnesses and the production of papers, to punish for contempt any person guilty of disrespectful or disorderly conduct in the presence of the commission while in session, and to enforce compliance with any of its lawful orders or requirements by adjudging, and enforcing by its own appropriate process, against the delinquent or offending company (after it shall have been first duly cited, proceeded against by due process of law before the commission sitting as a court, and afforded opportunity to introduce evidence and to be heard, as well against the validity, justness or reasonableness of the order or re-
65 quirement alleged to have been violated, as against the liability of the company for the alleged violation), such fines or other penalties as may be prescribed or authorized by this Constitution or by law. The commission may be vested with such additional powers, and charged with such other duties (not inconsistent with this Constitution) as may be prescribed by law, in connection with the visitation, regulation or control of corporations, or with the prescribing and enforcing of rates and charges to be observed in the conduct of any business where the State has the right to prescribe the rates and charges in connection therewith, or with the assessment of the property of corporations, or the appraisement of their franchises, for taxation, or with the investigation of the subject of taxation generally. Any corporation failing or refusing to obey any valid order or requirement of the commission, within such reasonable time, not less than ten days, as shall be fixed in the order, may be fined by the commission (proceeding by due process of law as aforesaid) such sum, not exceeding five hundred dollars, as the commission may deem proper, or such sum, in excess of five hundred dollars, as may be prescribed, or authorized, by law; and each day's continuance of such failure or refusal, after due service upon such corporation of the order or requirement of the commission, shall be a separate offence: provided, that should the operation of such order or requirement be suspended pending an appeal therefrom, the period of such suspension shall not be computed against the company in the matter of its liabilities to fines or penalties.

(*d*) From any action of the commission prescribing rates, charges of classifications of traffic, or affecting the train schedule of any transportation company, or requiring additional facilities, conveniences or public service of any transportation or transmission

company, or refusing to approve a suspending bond, or requiring additional security thereon or an increase thereof, as provided for in subsection (*c*) of this section, an appeal (subject to such reasonable limitations as to time, regulations as to procedure and provisions as to costs, as may be prescribed by law) may be taken by the corporation whose rates, charges or classifications of traffic, sched-
65 ule, facilities, conveniences or service, are affected, or by any person deeming himself aggrieved by such action or (if allowed by law) by the Commonwealth. Until otherwise provided by law, such appeal shall be taken in the manner in which appeals may be taken to the Supreme Court of Appeals from the inferior courts, except that such an appeal shall be of right, and the Supreme Court of Appeals may provide by rule for proceedings in the matter of appeals in any particular in which the existing rules of law are inapplicable. If such appeal be taken by the corporation whose rates, charges or classifications of traffic, schedules, facilities, conveniences or service are affected, the Commonwealth shall be made the appellee; but, in the other cases mentioned, the corporation so affected shall be made the appellee. The General Assembly may also, by general laws, provide for appeals from any other action of the commission, by the Commonwealth or by any person interested, irrespective of the amount involved. All appeals from the commission shall be to the Supreme Court of Appeals only; and in all appeals to which the Commonwealth is a party, it shall be represented by the Attorney-General or his legally appointed representative. No court of this Commonwealth (except the Supreme Court of Appeals, by way of appeals as herein authorized), shall have jurisdiction to review, reverse, correct or annul any action of the commission, within the scope of its authority, or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the commission in the performance of its official duties; provided, however, that the writs of *mandamus* and prohibition shall lie from the Supreme Court of Appeals to the commission in all cases where such writs, respectively, would lie to any inferior tribunal or officer.

(*c*) Upon the granting of an appeal, a writ of *supersedeas* may be awarded by the appellate court, suspending the operation of the action appealed from until the final disposition of the appeal; but, prior to the final reversal thereof by the appellate court, no action of the commission prescribing or affecting rates, charges or classifications of traffic of any transportation or transmission com-
67 pany shall be delayed, or suspended, in its operation, by reason of any appeal by such corporation, or by reason of any proceedings resulting from such appeal, until a suspending bond shall first have been executed and filed with, and approved by, the commission (or approved on review by the Supreme Court of Appeals), payable to the Commonwealth, and sufficient in amount and security to insure the prompt refunding, by the appealing corporation to the parties entitled thereto, of all charges which such company may collect or receive, pending the appeal, in excess of those fixed, or authorized, by the final decision of the court on appeal.

The commission, upon the execution of such bond, shall forthwith require the appealing company, under penalty of the immediate enforcement (pending the appeal and notwithstanding any *supersedeas*), of the order or requirement appealed from, to keep such accounts, and to make to the commission, from time to time, such reports, verified by oath, as may, in the judgment of the commission, suffice to show the amounts being charged or received by the company, pending the appeal, in excess of the charge allowed by the action of the commission appealed from, together with the names and addresses of the persons to whom such overcharges will be refundable in case the charges made by the company pending the appeal be not sustained on such appeal; and the commission shall also, from time to time, require such company, under like penalty, to give additional security on, or to increase, the said suspending bond, whenever, in the opinion of the commission, the same may be necessary to insure the prompt refunding of the overcharges aforesaid. Upon the final decision of such appeal, all amounts which the appealing company may have collected, pending the appeal, in excess of that authorized by such final decision, shall be promptly refunded by the company to the parties entitled thereto, in such manner, and through such methods of distribution, as may be prescribed by the commission, or by law. All such appeals affecting rates, charges of classifications of traffic, shall have precedence upon the docket of the appellate court, and shall be heard and disposed of promptly by the court, irrespective of its place of session,
68 next after the *habeas corpus*, and Commonwealth's, cases already on the docket of the court.

(*f*) In no case of appeal from the commission shall any new or additional evidence be introduced in the appellate court; but the chairman of the commission, under the seal of the commission, shall certify to the appellate court all the facts upon which the action appealed from was based and which may be essential for the proper decision of the appeal, together with such of the evidence introduced before, or considered by, the commission as may be selected, specified and required to be certified, by any party in interest, as well as such other evidence, so introduced or considered, as the commission may deem proper to certify. The commission shall, whenever an appeal is taken therefrom, file with the record of the case, and as a part thereof, a written statement of the reasons upon which the action appealed from was based, and such statement shall be read and considered by the appellate court, upon disposing of the appeal. The appellate court shall have jurisdiction, on such appeal, to consider and determine the reasonableness and justness of the action of the commission appealed from as well as any other matter arising under such appeal: provided, however, that the action of the commission appealed from shall be regarded as *prima facie* just, reasonable and correct; but the court may, when it deems necessary, in the interest of justice, remand to the commission any case pending on appeal, and require the same to be further investigated by the commission, and reported upon to the court (together with a certificate of such additional evidence as may be tendered before the

commission by any party in interest), before the appeal is finally decided.

(*g*) Whenever the court, upon appeal, shall reverse an order of the commission affecting the rates, charges or the classification of traffic of any transportation or transmission company, it shall, at the same time, substitute therefor such order as, in its opinion, the commission should have made at the time of entering the order appealed from; otherwise, the reversal order shall not be valid.
69 Such substituted order shall have the same force and effect (and none other) as if it had been entered by the commission at the time the original order appealed from was entered. The right of the commission to prescribe and enforce rates, charges, classifications, rules and regulations, affecting any or all actions of the commission theretofore entered by it and appealed from, but based upon circumstances or conditions different from those existing at the time the order appealed from was made, shall not be suspended or impaired by reason of the pendency of such appeal; but no order of the commission, prescribing or altering such rates, charges, classifications, rules or regulations, shall be retroactive.

(*h*) The right of any person to institute and prosecute in the ordinary courts of justice, any action, suit or motion against any transportation or transmission company, for a- claim or cause of action against such company, shall not be extinguished or impaired, by reason of any fine or other penalty which the commission may impose, or be authorized to impose, upon such company because of its breach of any public duty, or because of its failure to comply with any order or requirement of the commission; but, in no such proceeding by any person against such corporation, nor in any collateral proceeding, shall the reasonableness, justness or validity of any rate, charge, classification of traffic, rule, regulation or requirement, theretofore prescribed by the commission, within the scope of its authority, and then in force, be questioned: provided, however, that no case based upon or involving any order of the commission shall be heard, or disposed of, against the objection of either party, so long as such order is suspended in its operation by an order of the Supreme Court of Appeals as authorized by this Constitution or by any law passed in pursuance thereof.

(*i*) The commission shall make annual reports to the Governor of its proceedings, in which reports it shall recommend, from time to time, such new or additional legislation in reference to its powers or duties, or to the creation, supervision, regulation or control
70 of corporations, or to the subject of taxation, as it may deem wise or expedient, or as may be required by law.

(*k*) Upon the organization of the State Corporation Commission, the Board of Public Works and the office of Railroad Commissioner, shall cease to exist; and all books, papers and documents pertaining thereto, shall be transferred to, and become a part of the records of, the office of the State Corporation Commission.

(*l*) After the first day of January, nineteen hundred and five, in addition to the modes of amendment provided for in Article Fifteen of this Constitution, the General Assembly, upon the recom-

mendation of the State Corporation Commission, may, by law, from time to time, amend subsections *a* to *i*, inclusive, of this section, or any of them, or any such amendment thereof: provided, that no amendment made under authority of this sub-section shall contravene the provisions of any part of this Constitution other than the sub-sections last above referred to or any such amendment thereof.

COMMONWEALTH OF VIRGINIA:

I, D. Q. Eggleston, Secretary of the Commonwealth of Virginia and Keeper of the Seals thereof, do hereby certify that the foregoing is a true copy of sections one hundred and fifty-five and one hundred and fifty-six of the Constitution of Virginia, the original of which, by law, is in my custody; that said two sections are still in full force and effect, and have been so continuously since prior to January 1st, 1904.

Given under my hand and the Lesser Seal of the Commonwealth, at Richmond, this 25th day of June, in the year of our Lord, nineteen hundred and seven.

[Lesser Seal of the Commonwealth.]

D. Q. EGGLESTON,
Secretary of the Commonwealth and Keeper of the Seals.

71 DEFENDANTS' EXHIBIT NO. 2.

AN ACT

To put into effective operation the provisions of the constitution relating to the creation, appointment and organization of the "State Corporation Commission," its jurisdiction, powers, functions, and duties; the qualifications of the members and officers thereof, their appointment and salaries; the location of its offices, and places and times of its public sessions; its writs, processes, orders, findings and judgments; appeals from its orders, findings and judgments, and its expenses, etc.

Approved April 15, 1903.

Be it enacted by the General Assembly of Virginia as follows:

1. That as used in this act the term "corporation" or "company" shall include all corporations chartered by the acts of the General Assembly of Virginia, or under the general incorporation laws of this State, or doing business therein, and all trusts, associations, and joint-stock companies, having any powers or privileges not possessed by individuals or unlimited partnerships, and shall exclude all municipal corporations and public institutions owned or controlled by the State; the term "charter" shall be construed to mean a charter of incorporation by or under which any such corporation is formed; the term "transportation company" shall include any company, trustee, or other person owning, leasing, or operating for hire, a rail-

road, street railway, canal, steamboat, or steamship lines, also any freight-car company, car association or car trust, express company, or company, trustee, or person in any way engaged in business as a common carrier over a route acquired, in whole or in part, under the right of eminent domain; the term "transmission company" shall include any company owning, leasing, or operating for hire, any telegraph or telephone line; the term "public service cor-
72 poration" shall include all transportation and transmission companies, all gas, electric light, heat, and power companies, and all persons authorized to exercise the right of eminent domain, or to use or occupy any street, alley, or public highway, whether along, over, or under the same, in a manner not permitted to the general public; the term "person" as used in this act shall include individuals, partnerships, and corporations, in the singular as well as in the plural number; the term "the commission" shall be construed to mean the "State Corporation Commission," and the word "officers," when used in connection with said commission, shall be construed to mean any clerk, bailiff, assistant, or other appointee of the State Corporation Commission.

Appointment of Members of Corporation Commission; Terms; Commission.

2. That the governor shall, at least fifteen days before the first day of February, nineteen hundred and four, and at least fifteen days before the first day of February in each alternate year thereafter, appoint, subject to the confirmation of the General Assembly, in joint session, a citizen of this State, possessing the qualifications prescribed by the Constitution and by law to be a member of the "State Corporation Commission" (which shall be composed of three members), and whose term of office shall be that prescribed by the Constitution, and shall begin on the first day of February next succeeding his appointment and confirmation, except in the case of an appointee to fill a vacancy, or where the General Assembly fails to confirm an appointee to a full term of office before the date fixed by law for the commencement of his said term of office; in either case the term of office of any such appointee shall begin from the date of his qualification, and shall be for the unexpired portion of the term of office to which he shall be so appointed and confirmed. The members of the commission first appointed and confirmed, and those hereafter appointed and confirmed, shall hold office for the
73 respective terms for which they have been, or may hereafter be, appointed, and until their respective successors in office have been appointed, confirmed, and qualified, unless they shall sooner be removed from office as prescribed by the Constitution or by law. The governor shall commission each of the members of the commission, and said commission shall be filed by the members in the office of the clerk of the commission.

Who Eligible to Serve as a Member of the Commission; Qualifications, etc.

3. That no person shall be eligible to serve as a member of the State Corporation Commission who, on the date of the commencement of his term of office, shall be employed by or hold any office in relation to any transportation or transmission company, or is in any way financially interested therein, or is engaged in the practice of law; nor shall any person be eligible to appointment as a member of the commission unless at the time of his appointment he is a qualified voter under the Constitution and laws of this State. One of the commissioners shall have the qualifications prescribed for judges of the supreme court of appeals.

Oath of Office.

4. That the members of the commission and the officers thereof, for whose appointment provision is made either by the Constitution or by law, before entering upon the discharge of the duties of their respective offices, shall, in addition to the oath prescribed by section thirty-four of the Constitution, severally take and subscribe the following oath, to-wit:

"I, —— ——, do solemnly swear (or affirm) that at the present time I am not employed by, and do not hold any office in relation to, any transportation or transmission company, and have not in any wise any financial interest in any such company, and am not engaged in the practice of law, and that during the term of my office as — I will not either, directly or indirectly, be employed by
74 or hold any office in relation to any transportation or transmission company, or in any wise be financially interested in any such company, or be engaged in the practice of law, so help me God."

But the said additional oath shall be taken and subscribed by the first members of the commission and by the officers thereof as soon as practicable after the passage of this act.

The oaths prescribed by the Constitution and this act may be taken and subscribed before any officer authorized by the laws of this State to administer oaths, and shall be certified by such officer and recorded on the minutes of the proceedings of the commission, and then returned by its clerk as required by law as to the oaths of other State officers.

Offices of Commission to be Located in the City of Richmond; Where Notice, Writ or Process to be Returnable; When Public Sessions May be Held Elsewhere.

5. That the offices of the commission shall be located, and its public sessions, held, in the city of Richmond, and all notices, writs, and processes issued by the commission shall be made returnable to, and command the corporation or person against whom directed to appear before the commission and answer on a certain day to be named therein: provided, however, the commission may in its discretion, if public necessity or the convenience of the parties require,

hold public sessions elsewhere in the State, and may order any notice, writ, or process to be made returnable to the place of any such session; and for the holding of any such session the commission may occupy the court-room of the court-house of the city or county wherein such session may be held if said court-room shall not at the time be in use for the sessions of the court of any such city or county.

Offices.

6. That the rooms in the State library building now occupied as offices by the railroad commissioner shall be the offices of the
75 commission, its clerk, bailiff, assistants, and subordinates until otherwise provided by law, and the register of the land office is hereby directed to have the said rooms fitted up in a suitable manner for the use and occupation of the commission and its officers. And the sum of five hundred dollars, or so much thereof as may be necessary, is hereby appropriated for that purpose out of any moneys in the treasury not otherwise appropriated.

Clerk, Assistant Clerk, Bailiff, Stenographer, &c., Qualifications and Terms.

7. That the commission shall have a clerk, a first assistant clerk, a bailiff, and a stenographer (who shall also be a typewriter), each of whom shall have the qualifications for office, be clothed with the power, discharge the functions and perform all the duties hereinafter prescribed, and such other duties as may be prescribed or required by the commission, and all of whom shall be appointed by the commission, and whose respective terms of office shall be as prescribed by the commission, and they shall be subject to removal by the commission as hereinafter in this act provided. The officers so appointed shall hold office until their successors have been appointed, qualified, and given bond as required by law, unless they shall sooner be removed from office, as hereinafter provided.

Officers to be Residents of the State and Qualified Voters.

8. That the officers of the commission shall at the time of their appointment be actual residents of this State, and qualified voters therein, under the Constitution and laws thereof.

The First Members of the Commission to Meet, Organize, Appoint Clerical Force, &c.; When the Commission to be Vested With Powers and Function of Office.

9. That the persons appointed, confirmed, and commissioned to be the first members of the commission under the provisions of
76 section one hundred and fifty-five of the Constitution shall, as soon as practicable, meet in the office now used by the railroad commissioner and organize by taking and subscribing the oaths of office prescribed by the Constitution and by this act, and elect one of their number as chairman of the commission, appoint a clerk, a first assistant clerk, a bailiff, and a stenographer; and when or-

ganized the commission shall have all the powers, discharge all the functions, and perform all the duties prescribed by the Constitution and by law.

When the Office to Become Vacant; How Vacancies Filled.

10. That if any person heretofore or hereafter appointed and confirmed to be a member of the commission, or if any person appointed an officer of the commission, shall fail to qualify as required by the Constitution or by law, or to give any bond required by law of any such officer within thirty days after the date fixed by the Constitution or by law, as the commencement of the term of office to which he shall be appointed, then such office shall because of such failure to qualify, or to give any required bond within the time aforesaid, become vacant, and such vacancy shall, in the case of members of the commission, be filled as prescribed by section one hundred and fifty-five of the Constitution, and in the case of officers and appointees of the commission, be filled by appointment of the commission.

Duties of Clerk; Records; Certified Copies Same Legal Effect.

11. That the clerk of the commission shall keep a minute book in which shall be recorded all the proceedings, orders, findings, and judgments of the public sessions of the commission, and the minutes of the proceedings of each day's public session shall be read and approved by the commission and signed by its chairman, or acting chairman; he shall, subject to the supervision and control of the commission, have custody of and preserve all of the records, documents, papers, and files of the commission, or which may be filed before it in any complaint, proceeding, contest or controversy,
77 and said records, documents, papers, and files shall be open to public examination in the office of said clerk to the same extent as the records and files of the courts of this Commonwealth; he shall, when requested, make and certify copies from any record, document, paper, or file in his office, and if required, affix the seal of the commission thereto, and except when made at the instance of the commission or on behalf of the Commonwealth, he shall charge and collect the same fees as are fixed by law for like services rendered by the clerks of the courts of this Commonwealth, and any such copy, so certified, shall have the same faith, credit, and legal effect as copies made and certified by the clerks of the courts of this Commonwealth from the records and files thereof; he shall certify all allowances made by the commission to be paid out of the public treasury for witness fees, service of process, or other expenses; issue all notices, writs, processes or orders awarded by the commission; or authorized by law, or by the rules of the commission; he shall receive all fines and penalties imposed by the commission, all moneys collected on judgments, all registration fees required by law to be paid by corporations, all fees collected by any officer of the commission, and the tax on the seal of the commission, and shall keep an accurate account of the same and what disposition has been made thereof, together with all fees collected by him for services rendered,

either by him or his assistants, and shall, at least once in every thirty days during his term of office, render a statement of all such receipts and collections to the auditor of public accounts, and pay the same into the treasury of the Commonwealth, and shall keep all such other accounts of such collections and disbursements, and shall make all such other reports thereof as may be required by law or by the regulations prescribed by the auditor of public accounts; and generally shall have the powers, discharge the functions, and perform the duties of a clerk of a court of record in all matters within the jurisdiction of the commission.

78 Duties and Powers of First Assistant Clerk.

12. That the first assistant clerk of the commission shall have the powers, discharge the functions, and perform the duties in all matters within the jurisdiction of the commission of a deputy clerk of a court of record, and shall perform as well the duties of the clerk of the commission during the absence of said clerk, and in case of the death, resignation, incapacity, or removal from office of the clerk, he shall be the acting clerk of the commission until the vacancy in the office of clerk shall be filled.

Duties and Powers of the Bailiff.

13. That the bailiff of the commission shall, in all matters within the jurisdiction of the commission, have the powers, discharge the functions, and perform the duties of a sheriff or sergeant under the law; he shall preserve order during the public sessions of the commission, and may make arrests and serve and make return on any writ or process awarded by the commission, and execute any writ, order, or process of execution awarded upon the findings or judgments of the commission in any matter within its jurisdiction.

Duties of the Stenographer, &c.

14. The stenographer and other assistants and subordinates of the commission shall perform the duties required of them by law or by the commission, under its rules, regulations, and requirements.

The Commission to Require Its Officers to Enter into Bond; Amount, Conditions, and Recordation of Same.

15. The commission shall require its clerk, first assistant clerk, and bailiff, before entering upon the discharge of the duties of their respective offices, each to enter into bond, with surety to be approved by the commission, in such penalty as the commission
79 may deem sufficient (not in any case less than five thousand dollars), conditioned for the faithful performance of the duties of their respective offices, and for the prompt and full accounting for and payment into the treasury of all moneys received by them, respectively, as officers of the commission. The said bonds shall be made payable to the Commonwealth, and may be proceeded on and enforced in any circuit or corporation court in like manner

as the official bonds of other officers of this Commonwealth, or of its courts. Said bonds shall be recorded in the record of the proceedings of the commission, and the original bonds transmitted by its clerk to the auditor of public accounts, who shall file and preserve the same in his office.

Powers of the Commission.

16. The commission shall have power and authority to require, by its rules, regulations, and requirements, all corporations chartered under the laws of this State, and all foreign corporations, doing business in this State, to perform and discharge any public duty or requirement imposed upon such corporations by the Constitution, or by law, and may require all such corporations to furnish such reports to the commission as may be provided by the Constitution, or by law, and the commission may enforce against any such corporation, by its judgments and processes, any fine or other penalty imposed by law for the failure of any such corporation to perform any public duty required of it, or to comply with any requirement of law, or any lawful regulation of the commission in reference to the same. The commission may require the establishment by transportation companies of separate waiting rooms at all stations, wharves, or landings for the white and colored races.

80 Duties of the Commission with Respect to Transportation Companies, &c.

17. It shall be the duty of the commission to make inquiry and examination from time to time into the acts and proceedings of railroad, canal, steamboat, steamship, or other transportation companies, and other chartered common carriers and transmission companies, doing business in this State, their officers and agents, for the purpose of ascertaining whether anything has been done or omitted in violation or contravention of their charters, or of the law.

The Commission to Examine all Railroads, &c.

18. The commission shall examine all the railroads and the works and equipment thereof, and the works and equipment of all other transportation companies, and keep itself informed as to their physical condition and the manner in which they are operating with reference to the security and accommodation of the public, and the compliance of the several companies with the provisions of their charters and the laws of the Commonwealth. And the provisions of this section shall apply to all railroads and other transportation companies, and to the corporations, trustees, receivers, or other person owning or operating the same.

The Commission to give Notice to Transportation or Transmission Company of Violation of Law, and Compel Compliance with Same.

19. Whenever, in the judgment of the commission, it shall appear that any transportation or transmission company has violated any

law of this State, or has neglected in any respect or particular to comply with the terms of its charter, or with the provision of any of the laws of the Commonwealth, it shall give notice thereof in writing to such company or the person operating the same; and if the violation or neglect be continued after such notice, the commis-
81 sion shall take such proceedings and impose such fines or penalties within its jurisdiction as shall be necessary to compel such transportation or transmission company to comply with the terms of its charter and the provisions of the laws of the Commonwealth.

The Commission to Compel Railroad to Make Repairs When Necessary; Notice; Railroad May be Heard Thereon; Penalty.

20. Whenever in the judgment of the commission it shall appear that repairs are necessary upon any railroad, or that any addition to its rolling stock, or addition or improvement in the equipment of any other transportation line, or any enlargement of or improvement in the stations or station houses, waiting rooms, wharves or landings, or any change in the mode of operating the road, or other transportation line, and conducting its business, is reasonable and expedient in order to promote the security and accommodation of the public, it shall give ten days' notice in writing to the company or person operating the road, or other transportation line, of the improvements and changes which it adjudges to be proper, designating when and where the contemplated action in the premises will be considered and disposed of, and such company or person shall be afforded a reasonable opportunity to introduce witnesses and to be heard thereon, and any such company or person failing or refusing to obey any valid order or requirement of the commission in the premises within such reasonable time, not less than ten days, as shall be fixed in the order of the commission, it may impose upon any such company or person the fines and penalties prescribed by the Constitution and by law for its or his failure to obey the orders and requirements of the commission and the requirements of the law, and enforce the payment and collection thereof by its judgments and processes.

When Commission to Make an Examination of Road; Notice; Fines; How Same May be Enforced.

21. Upon the complaint and application of the mayor or
82 counsel of any city or town, or the board of supervisors of any county within which any part of any transportation or transmission line is located, it shall be the duty of the commission to make an examination of the physical condition and operation thereof. Before proceeding to make such examination in accordance with such application, the commission shall give to the applicants and the corporation or person operating any such line reasonable notice in writing, of the time and place of entering upon the same. If upon such examination it shall appear to the commission that the complaint alleged by the applicant is well founded, it shall so adjudge and shall notify such corporation or person of its adjudication;

and if such corporation or person fail for sixty days after such notification to remove the cause of complaint, the commission shall impose the fines and penalties provided by the Constitution and by law for its failure to obey the orders and requirements of the commission, and enforce the collection thereof by its judgments and processes.

Commonwealth to be Complainant, &c.

22. That in all complaints, proceedings, contests, or controversies by or before the commission, whether instituted by the Commonwealth or by the commission of its own motion, the Commonwealth shall be complainant, and the party against whom the complaint is preferred, or the proceeding instituted, shall be the defendant. Any party complainant or defendant in any complaint, proceeding, contest or controversy shall be entitled to process, to convene parties, compel the attendance of witnesses, or the production of books and papers, in any proceeding or hearing before the commission.

Proceedings to be as in Courts of Record.

23. That the commission, on hearing of all complaints, proceedings, contests, or controversies, in which it shall be called upon to decide or render judgment in its capacity as a court of record, shall observe and administer the common and statute law rules of evidence as observed and administered by the courts of this Commonwealth, in like manner as complainants and defendants in the courts of this Commonwealth.

Perjury.

24. That any person who shall wilfully swear falsely touching any material fact or matter in any complaint, proceeding, investigation, contest or controversy instituted or pending before the commission shall be deemed guilty of perjury.

The Commission to Cause its Rules of Procedure, &c., to be Entered of Record and Printed; Distribution of Copies.

25. That the commission shall cause its rules of order and procedure to be entered upon the records of its proceedings and to be printed, as well as all amendments and additions to the same, and shall furnish copies thereof to county and city clerks and to any citizen of this State upon application therefor.

The Commission to Summon Party Before Imposing Fine or Penalty; Contempts; Notice to be Given as to Rules or Orders Directed Against One or More Companies; General Order, Rule, &c., to be Published; Suspension of Order During Appeal; Penalties.

26. That the commission, before entering any judgment for any fine or penalty imposed by law shall summon or rule the party upon whom such fine or penalty is sought to be imposed to appear before the commission at some public session to be designated in the process,

to show cause against such fine or penalty, and why the same should not be imposed and judgment rendered therefor: provided, that the provisions of this section shall not apply to contempts com-
84 mitted in the presence of the commission while in public session; and before the commission shall make any order, rule, regulation, or requirement directed against any one or more companies by name, the company or companies to be affected by such order, rule, regulation, or requirement shall first be given by the commission at least ten days' notice of the time and place when and where the contemplated action of the commission in the premises will be considered and disposed of, and shall be afforded a reasonable opportunity to introduce evidence and to be heard thereon, to the end that justice may be done; and before the commission shall make or prescribe any general order, rule, regulation, or requirement, not directed against any specific company or companies by name, the contemplated general order, rule, regulation, or requirement shall first be published in substance, not less than once a week for four consecutive weeks, in one or more newspapers of general circulation published in the city of Richmond, Virginia, together with notice of the time and place when and where the commission will hear any objections which may be urged by any person interested, against the proposed order, rule, regulation, or requirement; and every such general order, rule, regulation, or requirement made by the commission shall be published at length for the time and in the manner above specified before it shall go into effect, and shall also, as long as it remains in effect, be published in each subsequent report of the commission. Any corporation failing or refusing to obey any valid order or requirement of the commission within such reasonable time, not less than ten days, as shall be fixed in the order, may be fined by the commission such sum, not exceeding five hundred dollars, as the commission may deem proper, or in such sum in excess of five hundred dollars as may be prescribed or authorized by law; and each day's continuance of such failure or refusal after due service upon such corporation of the order or requirement of the commission shall be a separate offense: provided, that should the operation of such order or requirement be suspended pending an appeal there-
from, the period of such suspension shall not be computed
85 against the company in the matter of its liability to fines or penalties: provided, further, that the power of the commission to impose the penalties prescribed by the Constitution, or by the law, for the failure or refusal of any corporation to obey its valid orders and requirements, shall not be construed to relieve any company or corporation from the penalties now prescribed or hereafter to be prescribed by law for the failure or refusal of any such company or corporation to perform any public duty or requirement prescribed, or which may be prescribed by any law of this State, but that such penalties may be enforced by the commission in addition to the penalties authorized to be imposed by the Constitution and by law for failure or refusal to obey any of its valid orders or requirements.

Powers of the Commission with Respect to Rendering and Enforcing Judgments, Penalties, &c., Collection and Payment of Same into the Treasury.

27. The commission shall have power and authority in all matters of which it has jurisdiction under the Constitution, or the laws of this Commonwealth, to render and enter up judgment for fines and penalties, or for the recovery of money, in any complaint, proceeding, contest, or controversy, whether instituted of its own motion or otherwise, and to issue process of execution thereon, which may be levied and executed in like manner as executions awarded and issued upon the judgments or decrees of the courts of law or equity of this Commonwealth. All judgments of the commission for fines or penalties, for contempt, or for the violation of any provision of the Constitution, or the laws of this State, or for the failure or refusal of any corporation to obey and observe the lawful rules, regulations, or orders of the commission, shall be entered up in favor of the Commonwealth, and when collected shall be paid by the clerk of the commission into the treasury, as hereinbefore provided.

86 The Commission to Have Power to Punish for Contempt by Fine or Imprisonment, &c., to the Same Extent and Manner as Courts; Commitment to Jail, &c.; Writ of Error.

28. The commission shall have powers and jurisdiction possessed and exercised under the law by the courts of record of this Commonwealth to punish for contempt by fine or imprisonment, or by both, any person duly summoned to appear and testify before the commission who shall fail or refuse to appear and testify, without a lawful excuse, or who shall refuse to answer any proper question propounded to him by the commission in the discharge of its duty or who shall conduct himself in a rude, disrespectful, or disorderly manner before the commission, or any of them, deliberating in the discharge of duty in public session, and may, for any such contempt, impose the same penalties, either by fine or imprisonment, or by both, and render and enter up judgment in any such proceeding and enforce the same by process of execution or by commitment to jail, or by both, in the same manner and by like process and proceedings, and to the same extent, as may by law be done by any of the courts of this Commonwealth. The commission may commit any person adjudged by it guilty of contempt to the jail of any city or county in the Commonwealth, and the jailer thereof shall receive such person upon the commitment of the commission, attested by its clerk, first assistant clerk, or acting clerk, and confine such person in the jail of his city or county, as the case may be, for the term of imprisonment specified in the commitment, unless sooner discharged therefrom by due process of law. The said jailer shall receive for the board of any person so committed the same allowance made by law for other persons confined in such jail, which shall be paid out of the public treasury upon the allowance of the commission, certified as hereinbefore provided. The fines and judgments of the commission in any contempt proceeding may be reviewed, affirmed, reversed, or modified, as justice may require, on writ of error from the commission to the supreme court of appeals.

87 The Commission May Award and Issue, Serve, Execute, and Return Process, &c., and Compel Attendance of Witnesses, as Courts.

29. That the commission shall, in all matters within its jurisdiction, have the power and authority to award and issue, have served, executed, and returned, any writ, notice, process, order, or order of publication which may by law be awarded, issued, served, executed, or returned by or to any court of law or equity in this Commonwealth, for the purpose of compelling the attendance of witnesses, the production of books and papers, the convening of parties, or the enforcement and execution of its findings, orders, or judgments.

Writs, &c., to Run in the Name of the Commonwealth; by Whom Issued and Served; Fees; Duties of Bailiff; Penalty for Failure to Execute Writ, &c.

30. That all writs, processes, and orders of the commission shall run in the name of the Commonwealth, and shall be attested by its clerk, or first assistent clerk, or acting clerk, and shall be directed to its bailiff, and may be served, executed, and returned by the said bailiff, in any city or county of the State, or by the sergeant or sheriff, or any constable, of any city or county in this State within his bailiwick. All writs, notices, processes, or orders of the commission may be served, executed, and returned in like manner and upon like persons or property as the processes, writs, notices, or orders of the courts of record of this Commonwealth, and when so served, executed, and returned shall have the same legal effect. The bailiff or other officer serving or executing any writ, notice, process, or order of the commission shall receive the same fees and commissions allowed by law for like services to the sergeants and sheriffs of the cities and counties of this State: provided, that the bailiff of the commission shall account for and pay to its clerk all fees and commissions received by him for any services which he may render, which
88 shall be accounted for and paid by the clerk of the commission into the treasury, as hereinbefore provided. The bailiff, or any other officer hereinbefore named, who shall fail to execute and return any writ, notice, process, or order of the commission shall be subject to the penalties prescribed by law for the failure to execute and return the process of any court, which penalties may be enforced by the judgment of the commission.

The Commission to Tax and Collect Like Fees and Costs as Courts; Fees and Mileage of Witnesses.

31. That the commission shall cause to be taxed and collected in all complaints, proceedings, contests, or controversies instituted or pending before it, like fees and costs taxed and collected for like services by the officers of the courts of this Commonwealth; also, the fees and mileage of witnesses attending upon its public sessions, and may enter judgment for the same and issue execution thereon, which execution may be levied and executed in like manner as execution issued upon the judgments or decrees of the courts of law or equity of this Commonwealth: provided, that no costs shall be taxed or col-

lected against the Commonwealth except on appeals of corporations under the provisions of section one hundred and eighty of the Constitution, which have been aggrieved by the assessments and ascertainments made by the commission under sections one hundred and seventy-six and one hundred and seventy-eight of the Constitution.

Judgments of the Commission to be a Lien on Real Estate When Duly Docketed, &c.; How Enforced; Clerks to Docket Judgments Certified by the Clerk of the Commission.

32. That the judgments of the commission for the recovery of money, fines, or penalties shall be a lien on the real estate of the judgment debtor when duly docketed and indexed in the judgment lien docket as the judgments of the courts of record are required by law to be docketed and indexed, in the county or city in which
89 the real estate of the judgment debtor is located, and the lien of such judgment may be enforced in equity before any court having jurisdiction to enforce liens. The clerks of the courts of the several cities and counties shall docket all such judgments on the lien docket of their respective courts when a copy thereof, certified by the clerk of the commission, shall be presented for that purpose.

When Sessions of the Commission Public; Judgments to be Rendered in Public Session; When Judgment Effective; Number, Time and Commencement of Session; One Regular Session Every Three Months.

33. That the sessions of the commission for the hearing of any complaint, proceeding, contest, or controversy instituted or pending before it, whether of its own motion or otherwise, shall be public, and its findings, decisions, and judgments shall be announced and rendered in public session. The judgments of the commission for fines or penalties, or for the recovery of money, shall take effect as of the date of such judgment, and when allowed by the commission in its order and entered up, the judgment shall bear interest from that date. The commission may, by its rules, provide for the number of its regular public sessions in each year, the time of their commencement, their duration, and for their adjournment; and may also provide for extra or special public sessions when, in their judgment, such extra or special public sessions may be necessary or required. The commission shall hold at least one regular public session in every three months in each year.

Appeal to Supreme Court; How Taken and Perfected; to be Heard Promptly, &c.; How Section Construed.

34. That the Commonwealth or any party aggrieved by any final finding, order, or judgment of the commission shall have, of right, regardless of the amount involved, an appeal to the supreme court of appeals, same to be taken and perfected within six months from the date of such final finding, order, or judgment, and the
90 supreme court of appeals may, on petition of the attorney-general, or any other party so aggrieved, if said petition be presented within six months from the date of the final finding, order,

or judgment of the commission, award a writ of supersedeas to any such final finding, order, or judgment, and may review, affirm, reverse, or modify the same, as justice may require, and enter therein such order as may be right and just. All such appeals shall be taken and perfected, heard and determined, and the mandate of the supreme court of appeals certified down to the commission in the same manner as appeals in equity causes from the circuit or corporation courts of this Commonwealth to the supreme court; except such appeals shall be heard and disposed of promptly by the supreme court, irrespective of its place of session, next after *habeas corpus* and Commonwealth's cases already on the docket; provided, however, this section shall not be construed to interfere in any way with the provisions of subsections (*d*), (*e*), (*f*), and (*g*) of section one hundred and fifty-six of the Constitution, as to appeals from the action of the commission, prescribing rates, charges, or classification of traffic, or affecting the train schedule of any transportation company, or requiring additional facilities, conveniences, or public service of any transportation or transmission company, or refusal to approve a suspending bond, or requiring additional security thereon, or an increase thereof; but shall be construed to provide only for appeals from the final findings, orders, and judgments of the commission in cases not expressly provided for by the Constitution.

Suspending Bond on Appeal; Costs &c.

35. That the commission may require a suspending bond on any appeal, in such penalty and with such surety thereon as it may deem sufficient, and may during the pendency of any appeal, at any time, require the increase of any such bond or additional security thereon: provided, however, there shall be of right, regardless of the amount, an appeal from the action of the commission refusing to approve a suspending bond, or requiring an increase thereof, or additional security thereon, in like manner as provided by subsections (*d*), (*e*), (*f*), and (*g*) of section one hundred and fifty-six of the Constitution. The commission may also require bond for the payment of costs in such penalty, and with such security, as it may deem sufficient, in any complaint, proceeding, contest, or controversy instituted or pending before it. All suspending bonds, and bonds for the payment of costs, taken or required to be taken by the commission, shall be made payable to the Commonwealth, and may be enforced in the name of the Commonwealth by motion or other legal proceeding or remedy before the commission, or in any circuit or corporation court of this Commonwealth having jurisdiction of a motion or action on such bonds, and the process and proceedings thereon shall be as provided by law upon bonds of the like character required and taken by any court of this Commonwealth, and the commission or such circuit or corporation court may render and enter up like judgments upon such bonds as may, by law be rendered and entered upon bonds of like character, and process of execution shall issue upon such judgments, and may be levied and executed as provided by law in other cases.

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Transportation Company upon Final Decision of Appeal to Refund Amount Collected Pending the Appeal in Excess of that Authorized: Penalty: Amount of Judgment Distributed Among Those Entitled Thereto.

36. That if any transportation company, upon the final decision of an appeal from the action of the commission prescribing rates, charges, or classification of traffic, confirming or modifying the action of the commission, shall fail to refund in the manner and within the time prescribed in the notice of the commission all amounts which the appealing company may have collected pending the appeal, in excess of that authorized by such final decision, upon notice to such corporation by the commission of such final decision, then the commission, after thirty days' notice to any such
92 company, may, unless the amount required by such order be paid to the clerk of the commission, render and enter judgment in the name of the Commonwealth, for the use of the persons, firms, and corporations entitled to the same, against any such company for the aggregate amount of such collections and for costs, and may enforce the amount of such judgment and costs by process of execution as hereinbefore provided as to the enforcement of the judgments of the commission. The commission shall, upon the collection of said judgment, forthwith distribute the amount thereof, through its clerk, among the parties entitled thereto, respectively, in such manner as it may by its rules or orders prescribe, and shall, upon the payment or collection of any such judgment, enter the same satisfied upon its records, and have the same entered satisfied on the judgment lien docket of the court of any city or county where the same may have been docketed, and the satisfaction of any such judgment shall be a bar to any further action or recovery against any such corporation to the extent of such recovery.

Accidents.

37. The commission may investigate the cause of any accident on any transportation line which, in its judgment, shall require investigation.

Transportation of Convicts and Insane Persons.

38. The commission is authorized to enter into contracts with the several railroads and other transportation companies, doing business in this State, for the transportation of convicts, insane, or other persons, who are cared for by the State, and of sheriffs and all necessary guards, to and from the penitentiary and the several State hospitals in this State, upon such terms as the commission and the several companies may agree, not to exceed two cents per mile for each person transported under such contract. Said contracts
93 may be renewed or extended for such time as the commission shall deem to be to the interest of the State.

The Commission to Determine the Most Direct Route, Furnish Schedules, &c., to Hospitals and Penitentiary.

39. The commission shall determine the most direct and practicable route from each courthouse by which to convey persons to the penitentiary and the several State hospitals, and shall file with the auditor of public accounts, the superintendent of the penitentiary, the superintendents of the several State hospitals, and the clerks of the several counties and corporations, a schedule of the route determined upon.

The Commission to Furnish Schedule Certificates of Transportation; by Whom Signed; How Companies May Collect on Same.

40. The commission shall furnish with such schedule certificates of transportation in the form agreed upon in its contract with the companies. Said certificates shall be signed by the clerk of the commission, and shall be taken up by the conductor or other agent authorized by said companies to collect fare, as other tickets or fares are collected. They shall be presented by the companies holding the same, either monthly or quarterly, as may be determined upon by the commission and the companies, to the auditor of public accounts, who shall examine the same, and if found correct, pay them as other claims against the State are audited and settled.

The Commission to Furnish Compilation of Statute Laws, &c., Governing Common Carriers, Distribution of Same; Rules to be Posted.

41. The commission shall, annually, on the first day of January, publish a compilation of the statute laws governing common carriers in the State of Virginia, together with a compilation of the rules and regulations prescribed for their government by the commis-
94 sion, and shall furnish a sufficient number of copies to each railroad company or transportation company, or person operating the same, to enable such company or person operating the same to post and keep posted conspicuously in every passenger and freight depot of the company, a copy of such laws, rules and regulations; and every such company, or person operating the same, is hereby required to see that such copies, when furnished by the commission, are posted and kept posted in the manner prescribed.

Seal of the Commission; to What It May be Affixed; Its Force and Effect; Fee.

42. That the commission shall have and use a common seal, to consist of a circular die with the coat-of-arms of Virginia and the title "State Corporation Commission" stamped upon the face of the die, and shall have power to affix said seal to any paper, record, or document when necessary for the purpose of authentication, and such seal, when so affixed to any paper, record, or document emanating from the commission or its clerk's office, shall have the same force and effect for authentication as the seal of any court of record in this State. The clerk of the commission shall collect a tax of one

dollar for each impression of said seal upon any paper, record, or document, for which tax he shall account to the auditor of public accounts, and pay the same into the public treasury as hereinbefore provided.

Docket.

43. That the commission shall keep a docket of all complaints, proceedings, contests, and controversies instituted or pending before it and all cases shall be numbered on the docket in the order in which they were instituted, and the papers therein jacketed and numbered in the same consecutive order, and when finally determined and disposed of, the papers and files shall be filed and preserved in the same numerical order and properly indexed for convenient future reference.

95 Allowance for Expenses, &c., to be Paid Out of the Public Treasury; Compensation, Mileage, &c., of Witness.

44. The commission shall, by order entered upon the records of its proceedings, make all allowances to be paid out of the public treasury for expenses, witness fees, and mileage, and for service of process, and when so allowed and certified by its clerk to the auditor of public accounts, the last-named officer shall draw his warrant for the payment of the amount of any such allowances out of the public treasury: provided, that the commission shall not allow to any witness exceeding one dollar per day for his attendance, nor exceeding five cents per mile for each mile traveled to and from the place of attendance, and shall not make any allowances to be paid out of the public treasury save when the expenses incurred, the witness attendance, or the services of process, is at the instance of the commission, or on behalf of the Commonwealth.

Register of Corporation; List of Charters to be Furnished by Secretary of the Commonwealth.

45. That the commission shall have made and kept in its clerk's office a register of all corporations, which register shall contain the corporate names of all corporations heretofore chartered and existing at this date, so far as the same may be obtainable, and those hereafter chartered by the laws of this State, and of all foreign corporations heretofore or hereafter licensed to transact business in this State, and as to domestic corporations shall contain also the following information, to-wit: Date of incorporation. Names and residences of officers and directors. Amount of capital stock, and whether preferred or common, or both, and the amount of each. Amount of bonds to be issued. Nature of corporate enterprise or business to be conducted. The place of its principal or general office or place of business.

The secretary of the Commonwealth shall forthwith prepare
96 and furnish to the commission a list of all charters recorded in his office up to April first, nineteen hundred and three, containing the above information so far as shown by the records of his office.

The Commission to Issue All Charters, &c., and to Certify Same under Its Seal to the Secretary of the Commonwealth; Recordation; Granting License to Foreign Corporations; Fees.

46. The commission shall issue all charters and all amendments, extensions, and renewal of charters, upon application, complying with the provisions of the incorporation laws of this State, and when any charter, or amendment, extension, or renewal of charter is issued, shall certify the same, under its seal, to the secretary of the Commonwealth for recordation as required by law, and the commission shall have the granting of all licenses to foreign corporations to transact business in this State. The commission shall, before approving any application or petition for a charter, or granting any license to any foreign corporation to transact business in this State, require the payment of the fees prescribed by law, and on or before the first day of March in each year, in addition to the franchise tax and the fees otherwise prescribed by law, require each domestic corporation, other than a purely charitable institution, and each foreign corporation doing business in this State, to pay a registration fee as follows: Where the proposed maximum capital stock is fixed at fifteen thousand dollars or under, or if such corporation is organized on a mutual basis or without capital stock, five dollars; in excess of fifteen thousand dollars and not over fifty thousand dollars, ten dollars; in excess of fifty thousand dollars and not over one hundred thousand dollars, fifteen dollars; in excess of one hundred thousand dollars and not over three hundred thousand dollars, twenty dollars; and in excess of three hundred thousand dollars, twenty-five dollars; all of which fees shall be collected and received by its clerk and accounted for and paid into the public treasury as hereinbefore provided.

97 The Commission to Designate Depository; Deposits; Checks; Officer Collecting Judgment to Pay Same within Ten Days; Penalty.

47. That the commission shall designate some State depository as a place of deposit for the moneys received by its clerk under this or any future act of the general assembly, and shall require its clerk to deposit therein all moneys received by him at least once in every twenty-four hours, and all checks upon said depository drawn by said clerk shall be countersigned by the chairman or acting chairman of the commission. That the bailiff of the commission, or any sergeant, sheriff, or constable who shall collect any judgment, or any part thereof, rendered by the commission, shall, within ten days after such collection, pay the amount thereof, either in current funds or by certified check, to the clerk of the commission. Any officer of the commission, or any sergeant, sheriff, or constable who shall omit or fail to perform any of the requirements of this section, shall be fined not less than five hundred dollars nor more than one thousand dollars, which may be imposed and judgment rendered therefor and enforced by the commission. All proceedings against any such officer and the surety on his official bond, may be had as provided by law in reference to official bonds, for default in the ac-

counting for, or payment over, of any moneys collected or received by him under the provisions of this act.

The Commission to Notify Corporation of the Amount of Registration Fee.

48. That the commission shall annually, on or before the first day of December, notify each corporation subject to a registration fee of the amount thereof, and when the same is payable, and when paid its clerk shall promptly receipt therefor to the corporation paying the same, such notice to be mailed to the last address furnished by such company.

98 Free Transportation to Members of the Commission.

49. That all transportation companies operating in this State shall, on the order of the commission, attested by its clerk, or on an order signed by any member of the commission, furnish free transportation to the members of the commission and its officers, when traveling on official business, and the order for such transportation shall show that the same is desired for official business.

Supplies, Printing, Expenses, &c.

50. That the commission shall have authority to purchase all necessary supplies, and to have all necessary printing and publishing done, and to secure all telephone and telegraph service necessary to the efficient discharge of its duties, and the same shall be paid out of the fund appropriated for its incidental and contingent expenses: provided, however, that all printing necessary for the commission shall be done by the public printer on its order.

Report of the Commission.

51. That the commission shall, on or before the first day of December in each year, tabulate and publish in statistical form such reports made to it in pursuance of the Constitution and laws of this State, as required by subsection (*a*) of section one hundred and fifty-six of the Constitution proper, and shall on the same date in each year, make report to the governor as required by subsection (1) of said section, to be by him laid before the general assembly at each regular session thereof.

Impeachment.

52. That any member of the commission who, during the term of his office, shall be directly or indirectly employed by, or hold any office in relation to, any transportation or transmission
99 company, or in any wise become interested therein, financially, or shall engage in the practice of law, or be guilty of misfeasance or malfeasance in office, shall be impeached and removed from office in the same manner provided for the impeachment and removal of judges of the supreme court of appeals;

and any officer of the commission for like causes, or for neglect of duty, or when, in the judgment of the commission, the public service will be promoted thereby, may be removed from office by the commission.

Board of Public Works and Railroad Commissioner to Surrender Records, Books, &c., to the Commission.

53. The board of public works and the railroad commissioner shall on the second day of March, nineteen hundred and three, or as soon thereafter as requested by the commission, surrender and deliver to the commission the records, books, files, and papers of their respective offices, and thereafter said records, books, files, and papers shall be and remain a part of the records, books, papers and files of the commission.

Salaries.

54. That the annual salaries of the members and officers of the commission shall be as follows: Each commissioner, four thousand dollars; the clerk, two thousand dollars; the first assistant clerk, fifteen hundred dollars; the stenographer, twelve hundred dollars; and the bailiff, nine hundred dollars; and the auditor of public accounts shall draw his warrant upon the public treasury for the payment of said salaries in equal monthly payments for each month of their respective terms of office.

Not to Impair Jurisdiction of Courts; Concurrent Jurisdiction.

55. This act shall not be construed to take away or impair the jurisdiction of any court of this Commonwealth to hear and determine any proceeding, suit or motion of which it now has jurisdiction, for the enforcement of any fine or penalty against any corporation under the laws of this State, but that the powers and jurisdiction of the commission to hear, determine, and enforce such fines and penalties shall be construed to be concurrent.

Powers and Duties Vested in Commission.

56. The commission is hereby charged with all the duties and vested with all the rights, property, functions, and powers heretofore performed, vested in, and exercised by the board of public works, except in so far as the same may be in conflict with the Constitution and laws of this State, and the commission shall particularly perform the duties and exercise the powers heretofore performed and exercised by said board, prescribed in sections fifty-nine to seventy-eight, inclusive, of this act.

The Commission or Some Member to Attend the Sale of Work of Internal Improvement in which the State is Interested.

57. The commission, or some member thereof, shall, and is hereby directed and authorized to, attend the sale of any work of internal

improvement in which the State is a stockholder or otherwise interested, whether such sale be made by virtue of mortgage, judgment, decree, or other lien.

When State may proceed against company by *quo warranto* and sell the works for abandonment or failure to use; deed of conveyance to be executed; collection of debts and proceeds of sale; purchaser to become corporation with privileges, &c., of old company.

58. If the works of any internal improvement company be not commenced and be completed within the time prescribed by law, or by its charter, or if after such works be completed, the company abandon them, or for three successive years cease to use and fail to keep them in good repair, in each of these cases the State may proceed against such company by writ of *quo warranto*, or information in the nature of a writ of *quo warranto*, and if in any such proceeding there is a judgment against the company, the commission shall forthwith take possession of its work and property and sell the same (except the debts owing to the company), and convey the works and property so sold to the purchaser thereof as soon as the purchase money has been paid, the deed of conveyance to be executed by the chairman of the commission under its seal. The commission shall, moreover, collect, as far as practicable, the debts aforesaid, and apply the proceeds thereof, and of the said sale, after deducting the costs and expenses of the collection and sale, to the discharge of the liabilities of the company, and whatever remains after said liabilities are discharged, pay into the treasury of the State. Upon such conveyance to the said purchaser, he shall forthwith be a corporation by any name which may be set forth in such conveyance, or any writing signed by him and admitted to record in the county or corporation wherein the conveyance shall be admitted to record; and to the corporation thus created all the provisions of section twelve hundred and thirty-four of the Code shall apply, except that the franchises, rights, and privileges to which such corporation shall succeed and the duties which it shall perform, shall be such as would have been had or performed by the first company but for the judgment aforesaid in the proceeding by writ of *quo warranto*, or information in the nature of a writ of *quo warranto*, save only as in said section provided.

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The Commission May Convey State's Interest in Road to County.

59. It shall be the duty of the commission, with the consent of the board of supervisors of any county given at any regular meeting by a two-thirds vote of all elected in such county, where in their opinion the public interest will be promoted thereby, to transfer and convey the State's interest in any turnpike or plank road, or any part thereof, to the county or counties in which said road lies. The transfer shall be made by a formal order to be entered upon the

minutes of the proceedings of the commission, and a copy to
102 be transmitted by its clerk to the clerk of the circuit or county court for record in the clerk's office in each county where the said road lies.

The Commission to Collect Dividends, &c., from Work in which State is Interested.

60. The commission shall be vested with power to collect any fund or dividend due from any work of internal improvement in which the State is interested, and to pay the same into the treasury to the credit of the sinking fund.

Proxies for Stock Held by State.

61. The commission, for all works in which the State may hold stock heretofore subscribed and not disposed of, shall from time to time appoint one or more proxies to represent the stock held by or on behalf of the State in the company having control of such work: provided, that the present proxies shall hold over until their successors are appointed.

Duty of State Proxies.

62. In cases in which it may be desired by the commission, its proxies shall cause to be transmitted to it copies of the reports of the proceedings of the directors of the companies in which they are proxies, the proceedings of the stockholders thereof, and other documents relating to the works, and shall make such reports as the commission may require or to the proxies may seem proper.

State Directors.

63. In every company to the stock of which the board of public works or the State has heretofore subscribed and which has not been disposed of, the commission shall appoint such portion of the directors as shall bear to the whole number of the directors of such company the same proportion, as nearly as possible, that the
103 stock held on behalf of the State in such company bears to the whole capital stock thereof.

When Appointed.

64. The appointment of directors in a company, according to the preceding section, shall be made by the commission before each annual meeting therein.

Terms of Directors and Proxies.

65. Proxies and directors appointed by the commission shall be in office from the time such appointment is in force until their successors are appointed, unless sooner removed. When a proxy fails to attend at any meeting, the commission, without removing him, may make a temporary appointment, to be in force during his absence.

The Commission to Keep Register of the Property of the State.

66. The commission and the second auditor shall cause to be registered, in books to be kept in their respective offices for the purpose, all claims, stocks, bonds, choses in action, and all property, real or personal, due or belonging to the State, with such description thereof as will enable easy reference to the same by any State officer or person interested.

Money Recovered by Action in Circuit Court of Richmond.

67. Any money forfeited to the commission, and any money which ought to be paid into the public treasury to the credit of the fund for internal improvement, shall be recovered, with interest on such money from the time the same ought to be paid by motion, after fifteen days' notice, or by action in the circuit court of the city of Richmond. The second auditor shall institute and prosecute in the name of the Commonwealth the proceedings after an order for such motion or action shall have been made by the commission.

104 Agents for the Collection of Debts, &c.

68. The commission may appoint agents for the collection of its debts or claims, and authorize them to secure payment thereof on such terms as it may approve, except it shall not appoint an agent to collect any judgment, fine, or penalty rendered or imposed by the commission.

When Commission May Purchase Estate Taken Under Execution.

69. When the estate of any person taken under execution or for sale under any decree or deed of trust for any such debt or claim will not sell for the amount thereof, the commission may purchase such estate.

May Sell and Convey Any Estate so Purchased.

70. The commission may sell any estate so purchased, at such time and on such terms as the commission may deem advantageous, and the commission shall execute a deed conveying to the purchaser all the interest which the commission may have in such land.

Compensation of Agent Under This Act.

71. For the services of any agent under this act, the commission may allow compensation not exceeding in any case, five per centum on the money actually paid into the treasury.

The Commission to Fix Tolls, &c.

72. Where the tolls of any canal, navigation, or bridge company are not prescribed by its charter, the commission shall fix such tolls as may seem to it reasonable, and may alter the same at its pleasure.

105 Assent by Stockholders to Sec. 65 of This Act.

73. If in any company incorporated and organized before the first day of July, eighteen hundred and fifty, to the stock of which the

board of public works or the State has, before or since that date, subscribed, a resolution be adopted in general meeting of the stockholders (by the vote of the majority of the stockholders, other than the State), assenting to section sixty-five of this act, the same shall thenceforth be of the same force in respect to such company that it would be if it had formed a part of the act incorporating such company. If such assent be not given, the votes in the meetings of the stockholders of such company and the appointment of directors therein shall continue to be according to the laws in force on the day before the Code of eighteen hundred and eighty-seven took effect, unless it be a company whose charter is, by the terms thereof, subject to be altered, amended, or modified by the general assembly; in which case the said section sixty-five shall be of the same force in respect to it as if such assent had been given.

Sale by James River and Kanawha Company of Its Works, &c., to Richmond and Alleghany Railroad Company.

74. That so much of the act entitled "an act to authorize the James River and Kanawha Company to make sale and transfer of all its works, property, and franchises to the Richmond and Alleghany Railroad Company, and to define the powers and duties of the board of public works in reference thereto," approved February twenty-seventh, eighteen hundred and seventy-nine, as has not been carried into effect, shall continue in force, and the commission shall exercise all the powers and perform all the duties conferred and imposed upon the board of public works by the said act.

The Commission to Make Report Showing Condition of Work or Company in Which State Has an Interest.

75. The commission shall make report to the general assembly at each regular session, showing the condition of each work made on the State account, or to the stock of which the board
106 of public works or the State had heretofore subscribed, and giving such other information in relation thereto as it may deem pertinent. And the second auditor shall also report to the general assembly, at such regular session a succinct statement relative to every such work, showing the gross amount of the year's income therefrom, the net balance of such income remaining, after paying current expenses, and interest on debts due on account of the work, and what percentage, such net balance is on the capital expended. On or before the first day of October the said reports shall be delivered to the superintendent of public printing, and he shall cause the same to be printed.

76. That subsection twelve of section one hundred and eighty-three, and sections twelve hundred and twelve, twelve hundred and thirty-six, twelve hundred and thirty-nine, twelve hundred and fifty-four, twelve hundred and ninety-eight, twelve hundred and ninety-nine, thirteen hundred, as amended by an act of the general assembly, approved March fourth, nineteen hundred; thirteen hundred and one, thirteen hundred and two, thirteen hundred and three, thirteen hundred and six, thirteen hundred and seven, thirteen hundred and eight, thirteen hundred and ten, thirteen hundred and eleven, as

amended by an act of the general assembly, approved March fourth, nineteen hundred; thirteen hundred and twelve, thirteen hundred and thirteen, thirteen hundred and fourteen, thirteen hundred and fifteen, thirteen hundred and sixteen, thirteen hundred and seventeen, thirteen hundred and eighteen, thirteen hundred and nineteen, thirteen hundred and twenty, thirteen hundred and twenty-one, thirteen hundred and twenty-two, thirteen hundred and twenty-three, thirteen hundred and twenty-four, thirteen hundred and twenty-five, thirteen hundred and twenty-six, thirteen hundred and twenty-seven, thirteen hundred and twenty-eight, thirteen hundred and twenty-nine, thirteen hundred and thirty, thirteen hundred and thirty-one, thirteen hundred and thirty-two, thirteen hundred and thirty-three, and thirteen hundred and thirty-seven of the Code of eighteen
167 hundred and eighty-seven, and sections eleven, twelve, and thirteen of the act of the general assembly of Virginia, approved March third, eighteen hundred and ninety-two, entitled an act to further regulate and control common carriers doing business in this State, and further defining the duties of the railroad commissioner in relation thereto, be, and the same are hereby, repealed.

77. This act shall be in force from its passage.

COMMONWEALTH OF VIRGINIA:

I, D. Q. Eggleston, Secretary of the Commonwealth of Virginia, and keeper of the seals thereof, do hereby certify that the foregoing (excepting the headings to the sections thereof) is a true copy of an act of the General Assembly of Virginia, entitled "An act to put into effective operation the provisions of the constitution relating to the creation, appointment and organization of the 'State Corporation Commission,' its jurisdiction, powers, functions and duties; the qualifications of the members and officers thereof, their appointment and salaries; the location of its offices and places and times of its public sessions; its writs, processes, orders, findings and judgments; appeals from its orders, findings and judgments, and its expenses, etc.," approved April 15, 1903, as the same is published according to law; that said act is still in full force and effect, and has been so continuously since prior to January 1st, 1904,—with this exception, that, by an act approved March 15, 1906, section 58 of the foregoing act was amended, and that said section is printed above as it reads after, instead of before, its amendment.

Given under my hand and the Lesser Seal of the Commonwealth, at Richmond, this 25th day of June, in the year of our Lord nineteen hundred and seven.

[Lesser Seal of the Commonwealth.]

D. Q. EGGLESTON,
Secretary of the Commonwealth and
Keeper of Seals.

108 DEFENDANTS' EXHIBIT No. 3.

COMMONWEALTH OF VIRGINIA:

Department of the State Corporation Commission.

CITY OF RICHMOND, *Tuesday, Oct.* 6, 1903.

The Commission having, as required by law, formulated a set of Rules of Practice and Procedure, in cases and proceedings before it, it is ordered that the same become operative on and after this date, and that they be spread in full upon the minutes of the Commission, and being so recorded in the Order Book, are in the words and figures following, viz:

Rules of Practice and Procedure Before the State Corporation Commission of Virginia.

Public Sessions.

1. The regular Public Sessions of the Commission, sitting as a court, for the hearing of contested cases and matters properly coming before it, will be held at its offices, in the City of Richmond, on the second Monday in January, April, June, September and November in each year. These sessions may be adjourned from time to time, and shall last so long as the business before the Commission, and the public interests may require. These sessions may be adjourned, during their respective terms, to any other place in the State, upon order of the Commission, that the public necessity or the convenience of the parties require an adjournment.

Special judicial sessions of the Commission may be held at any time upon order of the Commission, or a majority of its
109 members, in the City of Richmond, or elsewhere in the State, for the hearing of all matters over which the Commission has jurisdiction.

Parties.

2. All complaints, proceedings, contests, or controversies, before the Commission, shall be instituted in the name of the Commonwealth, as complainant, and the party against whom the complaint is preferred, or the proceeding instituted, shall be the defendant; in all proceedings instituted by the Commission of its own motion, the complainant shall be, "The Commonwealth at the relation of the State Corporation Commission"; in all other complaints and proceedings, instituted by parties, the complainant shall be styled "The Commonwealth at the relation of ——."

Any person, firm, corporation, or association, or any commercial body, may institute a complaint before the Commission. When instituted by an unincorporated association or mercantile body, the complaint must be in the name of a committee of not less than two persons on behalf of such association or body.

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When the complaint concerns anything done, or omitted to be done, by a single carrier or other corporation, no other need be made a party, but if it relates to joint tariffs, or questions in which two or more carriers or other corporations are interested all such must be made parties. A complaint may embrace several carriers, or lines of carriers, operated separately, in the same proceeding, when the subject matter of the complaint involves substantially the same violation of the law, or of the rules and regulations of the Commission, by the several carriers or lines. Persons or carriers not originally parties may apply, in any pending case or proceeding, for leave to intervene, and to be heard upon the questions involved. Such application must be by petition, verified by oath, which must set forth the petitioners' interest in the proceeding.

110 Petitions and Complaints.

3. All complaints for the redress of alleged grievances or violation of law by the defendant must be in writing and addressed to the Commission. Such petition or complaint must distinctly and plainly set forth the grounds of complaint, the items being numbered, and the petition or complaint must be verified by affidavit. The name of the corporation, or other parties complained against, must be stated in full, and the address of the complainant, with the name and address of his attorney or counsel, if any, must appear upon the petition, where the complaint is made otherwise than on the motion of the Commission.

Notice.

4. The petition or complaint may be filed before the Commission, or with its clerk, and, thereupon, a notice, in the form of a writ, shall be issued, according to law, by the Clerk, directed to the Bailiff of the Commission or other proper officer, summoning the defendant or defendants to appear before the Commission on the day named therein, which shall not be less than ten days from the filing of the complaint. The said writ and notice, and a copy of the complaint, shall be served upon the defendant or defendants, and return made according to law.

Answers.

5. Upon the day named in the writ, or notice, the defendant or defendants shall file before the Commission an answer in writing, specifically admitting or denying, by items, the material allegations of the complaint, and setting forth the facts which will be relied upon to support any such denial. The answer shall be verified by affidavit, and be signed by the attorney or counsel, if there be such. If the parties are ready, upon the filing of the answer, the Commission may proceed at once to hear the matter of contest. If either party be not prepared for the hearing, then an adjournment may be had
111 and the day for the hearing fixed upon the application of either party, in the discretion of the Commission.

Instead of answering the complaint, defendant or defendants may demur to the same, filing a demurrer in writing on the return day.

Amendments.

6. Upon the application of any party, amendments to any complaint or answer in any proceeding or investigation may be allowed by the Commission, in its discretion.

Stipulations or Agreed Facts.

7. The parties to any complaint or proceeding before the Commission may, by stipulation in writing, filed with the Commission, agree upon the facts, or any portion thereof, involved in the controversy, which stipulation shall be recorded and used as evidence on the hearing. It is desired that the facts be thus agreed upon whenever practicable.

Hearings.

8. Upon the filing of the answer, the hearing will proceed at once, or the Commission will assign the time and place for the same. Witnesses will be examined orally before the Commission, unless testimony or facts are agreed upon, as otherwise provided in these rules. The petitioner or complainant must prove the existence of the facts complained of, unless they are admitted, or the defendants be in default by failing to answer. Facts alleged in the answer must be proved by the defendant or defendants, unless admitted by complainant. In cases of failure to answer, the Commission will take such proof of the charge as may be deemed reasonable and proper, and make such order thereon as the circumstances of the case may require.

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Depositions and Witnesses.

9. The testimony of any witness may be taken by deposition, at the instance of a party, in any proceeding or investigation before the Commission after the same is at issue by the filing of the answer. Such depositions must be after notice, and before the officer required and allowed by the statutes of Virginia. Any party, complainant or defendant shall be entitled to process to compel the attendance of witnesses or the production of books and papers before the Commission. Such process will be issued, for proper service and return by the clerk of the Commission, upon application of any party to the proceeding. When depositions are taken they must be returned to the Clerk of the Commission, as depositions are required by law to be returned to the Clerk of a court of chancery.

Argument.

10. Whenever requested by the proper authorities, the Attorney-General of the State may represent the complainant in any proceeding.

Arguments may be made orally before the Commission or written or printed briefs may be filed in any case within such time as may be prescribed by the Commission in such case. For convenience in reading and filing, it is requested that, whenever practicable, in cases of importance, arguments be printed.

Special Matters.

11. In the performance of special functions of a judicial nature, imposed upon it directly by law, and not instituted by any complaint such as the assessment of property of corporations and other like matters, such notices will be given and proceedings be had, as are required by the statutes under which the Commission acts in the performance of such duties.

113 General Business.

12. The offices of the Commission, on the fourth floor of the City Hall of Richmond, will be open for the transaction of business on week days from 9 A. M. to 6 P. M. When the Commission is not in session, applications for charters and all papers to be presented to the Commission, or filed in its offices, may be left with the Clerk. Official communications by mail should be addressed to the "State Corporation Commission," and not to the Chairman or any member of the Commission individually.

COMMONWEALTH OF VIRGINIA:

Department of the State Corporation Commission.

CITY OF RICHMOND, *8th of January*, 1906.

The books, papers and records of the State Corporation Commission having been removed from the quarters heretofore occupied by it in the City Hall of the City of Richmond to the rooms assigned to it for the use of the members and the clerical force of the Commission, including a room assigned to it for use as a hearing or court-room, all in the restored Capitol Building of the State; and the Commission being now in occupancy and possession of the said rooms and said court-room in the Capitol Building:

It is ordered, That the same be and remain its permanent quarters and hearing or court-room until other provision is made by law.

VIRGINIA, *City of Richmond, To wit:*

We, R. R. Prentis and R. T. Wilson, chairman, and clerk, respectively, of the State Corporation Commission of Virginia, do hereby certify that the foregoing is a full, complete and true copy of the rules of practice and procedure before the said Commission:
114 that the said rules, &c., were prescribed and entered of record as above set forth; that, as is above shown, section 12 of said rules, &c., was, in one respect, amended by the foregoing order of January 8th, 1906; and that, with the exception of said section 12, all of the foregoing rules, &c., are now in full force and effect, and have been so continuously since the 6th day of October, 1903.

In testimony whereof, we have hereunto set our hands and affixed the seal of the said State Corporation Commission, this, the 25 day of June, 1907.

[Seal of the State Corporation Commission of Virginia.]

ROBERT R. PRENTIS, *Chairman.*
R. T. WILSON, *Clerk.*

This day, R. T. Wilson, clerk of the State Corporation Commission of Virginia, to me personally known, appeared in person before me, the undersigned, a notary public in and for the City of Richmond, in the State of Virginia, and, before me, in my said city, subscribed and made oath to the foregoing certificate.

In testimony whereof, I have hereunto set my hand and affixed my official seal this, the 25th day of June, 1907.

[NOTARIAL SEAL.]

JNO. S. EGGLESTON,
Notary Public.

115 DEFENDANTS' EXHIBIT No. 4.

STATE OF VIRGINIA, *City of Richmond, To-wit:*

This day, R. T. Wilson, to me personally known, appeared in person before me, the undersigned, a notary public in and for the city aforesaid, in the State of Virginia, and made oath before me, in my said city as follows:

That he is now, and has been continuously since the 31st day of July, 1906, the clerk of the State Corporation Commission of Virginia.

That, between the 31st day of October, 1906, and the 27th day of April, 1907, the said Commission was engaged a great number of days, in receiving testimony, hearing argument, and otherwise considering, the matters and things involved in and connected with the proceeding before said Commission, which may be called the "Passenger Rate Proceeding," and in which the said Commission, on the 27th day of April, 1907, entered its order prescribing the maximum passenger rates to be charged by the several railroad companies mentioned in said order.

That all of the railroad companies mentioned in said order appeared before the said Commission during the course of said proceeding, filed answers in the same, on the 1st day of November, 1906, produced witnesses before said Commission, introduced much documentary evidence, and made elaborate defences therein.

That the oral testimony adduced before said Commission by all of the railroad companies appearing in said proceeding was taken down by stenographers, and thereafter reduced to writing, and such testimony, together with the documentary evidence also introduced in said proceeding, and the evidence in the "Freight Rate Proceeding," next hereinafter referred to, covers several thousand pages.

That, prior to the said 27th day of April, 1907, the said Commission had devoted several months to the hearing of evidence
116 and argument in a proceeding before it, the object of which was to enter an order relating to *freight* charges to be made by the railroad companies which were parties to that proceeding, which may be called the "Freight Rate Proceeding"; that the *Southern Railway Company, Chesapeake & Ohio Railway Co., Norfolk & Western Railway Co., Atlantic Coast Line Railroad Co.*, and *Louisville & Nashville Railroad Co.*, were all parties to said "Freight Rate

Proceeding," and not only filed answers, but introduced much testimony therein; that the oral testimony adduced before said Commission by all of the railroad companies appearing in said "Freight Rate Proceeding" was taken down by stenographers, and thereafter reduced to writing, and such testimony, together with the documentary evidence also introduced in said proceeding, covers several thousand pages; that the said evidence in said "Freight Rate Proceeding" was made a part of the evidence in said "Passenger Rate Proceeding," and that all of the evidence referred to in this affidavit is now in the possession and custody of the said affiant, in his capacity as clerk of the said Commission, and is preserved by him to be made a part of the record of said "Passenger Rate Proceeding" when so ordered by said Commission, in case of appeal in said proceeding.

That the signature next hereunto affixed is the signature of the said affiant.

R. T. WILSON.

In testimony whereof, I, the aforesaid notary public, have hereunto subscribed my signature, and affixed my notarial seal, this the 25th day of June, 1907.

[NOTARIAL SEAL.] JNO. S. EGGLESTON.
Notary Public.

117 DEFENDANTS' EXHIBIT NO. 5.

VIRGINIA:

Pleas before the State Corporation Commission, at its Court-room in the City of Richmond, Virginia, on the 27th Day of April, 1907.

Judicial Case 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

Be it remembered, that heretofore, to-wit: on Tuesday, the 31st day of July, 1906, the following notice and order was entered:

Offices of the State Corporation Commission.

RICHMOND, VA., *31st Day of July,* 1906.

To the Several Steam Railroad Companies doing business in Virginia, and all persons interested:

Take notice, that the State Corporation Commission will, in the City of Richmond, on Thursday the first day of November, 1906, at 12:00 o'clock noon, in accordance with authority conferred by the Constitution of Virginia, and the statutes enacted by the General Assembly of Virginia pursuant thereto, hear and consider any objections which may be urged against a rule, regulation, order, or re-

quirement of the Commission, fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers over the line of any railroad company in this State, operated by steam, between points within the State of Virginia, said maximum rate to be observed whether the transportation be entirely over the line of one railroad company, or joint transportation over the lines of two or more companies; and whether the contract for transportation of a passenger or passengers be evidenced by an ordinary
118 ticket between stations, by a mileage book, or otherwise; the Commission to have, as authorized by law, the power and authority from time to time, and as often as circumstances may require, to change or revise the rate, or by rules, regulations and requirements to provide for the more convenient and expedient putting into effect and proper observance of said maximum rate. At the said hearing and consideration of the said maximum rate of two cents per mile, the method, time and extent of promulgating and putting into effect the same, will be heard and determined by the Commission, to the end that a maximum rate for passenger transportation may be put into effect and be made applicable to all steam railroad companies doing business in Virginia, and be properly observed by them in the transportation of passengers.

BEVERLEY T. CRUMP, *Chairman*.
H. C. STUART,
JOS. E. WILLARD,
Commissioners.

And at another day, towit: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Thursday, November 1st, 1906, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

NOVEMBER 1ST, 1906.

In the Matter of Prescribing a Maximum Passenger Rate.

The notice in this proceeding, addressed to the several steam railroad companies doing business in Virginia and all persons interested, having been regularly published as prescribed by law once a week for four successive weeks in the Times-Dispatch, a daily news-
119 paper published in the City of Richmond, this matter came before the Commission for hearing on this day. Several of the railroad companies doing business in Virginia appeared before the Commission, by counsel, and answers were filed on behalf of the Atlantic Coast Line Railroad Company, the Norfolk & Western Railway Company, The Chesapeake and Ohio Railway Company, Seaboard Air Line Railway, Virginia and Southwestern Railway Company, Chesapeake Western Railway Company, the Valley Railroad

Company and the Baltimore and Ohio Railroad Company operating the Winchester and Strasburg and the Winchester and Potomac Railroad, the Southern Railway Company, Richmond, Fredericksburg & Potomac Railroad Company, Washington-Southern Railway Company, and the Virginia and Kentucky Railway Company, and leave was granted to any of the other railroads to file answers herein before the taking of testimony was commenced. Thereupon, the hearing and investigation of the matters involved in this proceeding were continued to Tuesday, th- 4th day of December, 1906, at 11:00 o'clock in the morning.

And at another day, to-wit: At a session of the State Corporation Commission, continued by adjournment at the court-room aforesaid on Tuesday, December 4th, 1906, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION

v.

STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *December 4th*, 1906.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered in this proceeding on the first day of November, the matter herein involved came on this day to be heard. Thereupon, the hearing and investigation was con-
120 tinued to Tuesday, the 11th day of December, 1906, at 11:00 o'clock in the morning.

And at another day, to-wit: At a session of the State Corporation Commission, continued by adjournment at the court-room aforesaid on Monday, December 10th, 1906, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION

v.

STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *December 10th*, 1906.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered in this proceeding on the 4th day of December, 1906, the matters herein involved came on this day to be heard. Thereupon, the hearing and investigation was continued to Wednesday the 19th day of December, 1906, at 11 o'clock in the morning.

And at another day, to-wit: At a session of the State Corporation Commission, continued by adjournment at the court-room aforesaid on Wednesday, December 19th, 1906, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *December 19th*, 1906.

In the Matter of Prescribing a Maximum Passenger Rate.

121 Pursuant to the order entered in this proceeding on the 11th day of December, 1906, the matters herein involved, came on this day to be heard. Thereupon the hearing and investigation was continued to Wednesday the 16th day of January, 1907, at 11 o'clock in the morning.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Wednesday, January 16th, 1907, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *16th Day of Jan'y*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered in this proceeding on the 19th day of December, 1906, the matters herein involved came on this day to be heard. Thereupon by leave of the Commission, the Norfolk and Southern Railway Company, the Louisville and Nashville R. R. Co. and the New York, Philadelphia and Norfolk R. R. Co. filed their respective answers in writing before the Commission. Thereupon the hearing and investigation in this proceeding was continued to Tuesday the 22nd day of Jan'y, 1907, at 11 o'clock in the morning.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Tuesday, January 22nd, 1907, the following order was entered:

122 No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION

v.

STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *22nd Day of Jan'y*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to order entered in these proceedings on the 16th day of January, 1907, the parties again appeared before the Commission on this day and the taking of testimony herein was commenced, testimony being first adduced by the Chesapeake and Ohio Ry. Co.; and not being concluded on this day was adjourned over for further hearing until to-morrow and ordered to be continued from day to day or from time to time until concluded.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Monday, January 28th, 1907, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION

v.

STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *28th Day of Jan'y*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered in these proceedings on the 22nd day of January, 1907, these proceedings were heard and
123 testimony was taken before the Commission bearing upon the matters at issue herein, by the Chesapeake and Ohio Railway Company and the Norfolk and Western Ry. Co. at public sessions of the Commission held for that purpose on the 23rd, 24th, 25th, of January, 1907, and this day, and testimony not having been concluded at the adjournment of this day, the further taking of testimony and the hearing of all matters involved in this proceeding was continued until Wednesday, January 30th, 1907, at 11:00 o'clock in the morning.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Wednesday, January 30th, 1907, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *January* 30, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered in these proceedings on January 28th, 1907, the hearing of the matters at issue herein was resumed on this day. The Seaboard Air Line Railway Company appeared to-day before the Commission and presented testimony on its behalf bearing upon the matter involved in this proceeding. The testimony of said railroad company having been fully heard, the further hearing of this matter and the taking of testimony herein was continued until Tuesday, the 5th day of February, 1907, at 11 o'clock in the morning.

124 And at another day to-wit: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Tuesday, February 5th, 1907, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *February* 5, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered in these proceedings on the 30th day of January, these proceedings came on to be heard again this day and the further hearing and taking of testimony was continued until to-morrow the 6th day of February at 11:00 o'clock in the morning.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Wednesday, February 6th, 1907, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *February* 6, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered on yesterday these proceed-
125 ings were further heard on this day and testimony was taken before the Commission bearing upon the matters at issue herein, testimony being adduced by the Southern Railway Company, and not having been concluded at the adjournment on this day, the taking of the same and the hearing of all matters involved herein was continued to-day until to-morrow at 11 o'clock in the morning and further ordered to be continued from day to day or from time to time until the further order of the Commission.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the court-room on Tuesday, February 12th, 1907, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *February 12th*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered in these proceedings on the 6th day of February, 1907, the further hearing and taking of testimony herein not being concluded on that day was continued at a public session of the Commission held for that purpose on the 8th day of February, the 11th day of February and this day, testimony being heard on behalf of the Southern Railway Company, the Washington-Southern Railway Company and the Virginia and Southwestern Railway Company. The taking of testimony and the hear-
126 ing of the matters involved in these proceedings not being concluded on this day, these proceedings are continued until Tuesday, Feb'y 26th, 1907, at 11 o'clock in the morning.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Friday, March 1st, 1907, the following order was entered:

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *1st Day of March*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered herein on the 12th day of February, 1907, the hearing and taking of testimony in this proceeding was resumed on the 26th day of February, 1907, and not being completed on that day was further continued and testimony taken on the 27th day of February and on the 1st day of March and the testimony on behalf of the railway companies which desired to be heard in this proceeding having been completed, the hearing and further taking of testimony herein on the part of the Commonwealth or of any defendant railway companies which may further desire to be heard was continued to a day to be fixed by the Commission of which the parties of record were to be notified.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Wednesday, March 27th, 1907, the following order was entered:

127 No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *March 27th*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Counsel of record having been notified that the hearing and consideration of these proceedings would be resumed on this date the parties appeared again before the Commission and further testimony was taken herein. The hearing not being completed on this day, was adjourned and continued until to-morrow morning at 11 o'clock.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Thursday, March 28th, 1907, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *March 28th*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

In these proceedings the parties, by counsel, again appeared before the Commission on this day and the further consideration of the matters involved herein was resumed. The testimony was fully completed on behalf of all railroad companies making objections
128 herein and also on behalf of the Commonwealth and all matters at issue on this hearing and in this proceeding were submitted to the Commission for its consideration and decision and for the entry of such rule, regulation, order or requirement as may be deemed just, reasonable and valid herein. The Commission not yet being advised of such proper order, rule, regulation or requirement time is taken to consider thereof.

No. 99.

And at this day, to-wit: At a session of the State Corporation Commission, continued by adjournment at the court-room aforesaid, the following judgment and order was entered:

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *27th Day of April*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

The State Corporation Commission having carefully considered all the proceedings herein, and all the testimony, exhibits and statements adduced and filed before it in this proceeding, and having put its conclusions in writing, which are made a part of the record herein, the Commission, in order to carry out its said conclusions, now makes the following order and regulations and prescribes the following maximum rates to be observed by all the steam railroad companies operating in the State of Virginia, in the transportation of passengers:

1. It is ordered, that on and after the first day of July, 1907, the following steam railroad companies, viz:

Norfolk and Western Railway Company,
129 Chesapeake and Ohio Railway Company,
Atlantic Coast Line Railway Company,

Seaboard Air Line Railway Company,
Southern Railway Company,
Richmond, Fredericksburg and Potomac Railroad Company,
Washington-Southern Railway Company,
New York, Philadelphia and Norfolk Railroad Company,
Virginia and Southwestern Railway Company,
Louisville and Nashville Railroad Company

shall put into effect and observe a maximum rate of two cents per mile in the intra-state transportation of passengers in Virginia, said maximum rate to be observed whether the transportation be entirely over the line of one of the said railroad companies, or joint transportation over the lines of two or more companies; and on and after the said date it shall be unlawful for the said railroad companies, or any of them, to charge or collect a greater sum than two cents per mile for the transportation of passengers over the lines controlled and operated by them, respectively, except as otherwise allowed in this order, or from time to time, by the State Corporation Commission.

2. It is ordered, that a maximum rate of two and one-half cents per mile for the intra-state transportation of passengers be fixed and prescribed to go into effect on and after the first day of July, 1907, on the following divisions or branches, of the Southern Railway Company, which are now excepted from the operation of the maximum rate of two cents per mile hereinabove fixed.

Norfolk Division, extending form Pinner's Point to Danville, 204 miles, exclusive of so much of the said division as may be in the State of North Carolina;

Franklin Branch, extending from Franklin Junction to Rocky Mount, 37 miles;

Claremont Branch, extending from James River Junction to Claremont, 50 miles.

130 From and after the said date it shall be unlawful for the Southern Railway Company to charge or collect a greater sum than two and one-half cents per mile for the intra-state transportation of passengers over these divisions, or branches, unless otherwise directed, or allowed by the Commission.

3. It is ordered, that on and after the first day of July, 1907, the following steam railroad companies, viz.:

Chesapeake-Western Railway,
Cumberland Valley and Martinsburg Railroad Company,
Danville and Western Railway Company,
Indian Creek and Pound River Railroad Company,
Marion and Rye Valley Railway Company,
Nelson and Albemarle Railway Company,
Valley Railroad Company of Virginia,
Virginia-Carolina Railway Company,
Virginia Southern Railroad Company,
Winchester and Potomac Railroad Company,
Winchester and Strasburg Railroad Company,
Norfolk and Southern Railway Company,

shall put into effect and observe a maximum rate of three cents per mile in the intra-state transportation of passengers in Virginia, and on and after the said date it shall be unlawful for the said railroad companies, or any of them, to charge or collect a greater sum than three cents per mile for the transportation of passengers over the lines controlled and operated by them, respectively, except as otherwise allowed from time to time by the State Corporation Commission.

4. It is ordered, that on and after the first day of July, 1907, the following steam railroad companies, viz.:

Big Sandy and Cumberland Railroad Company,
Black Mountain Railroad Company,
Interstate Railroad Company,
Lick Creek and Lake Erie Railroad Company,
Mt. Airy and Eastern Railway Company,
New River, Holston and Western Railroad Company,
Potomac, Fredericksburg and Piedmont Railroad Company,
131 Surry, Sussex and Southampton Railway Company,
Tidewater and Western Railroad Company,
Virginia Anthracite Coal and Railway Company,
Virginia and Kentucky Railway Company,
Wise Terminal Company,

shall put into effect and observe a maximum rate of three and one-half cents per mile in the intra-state transportation of passengers in Virginia, and on and after the said date it shall be unlawful for the said railroad companies, or any of them, to charge or collect a greater sum than three and one-half cents per mile for the transportation of passengers over the lines controlled and operated by them, respectively, except as otherwise allowed from time to time by the State Corporation Commission.

5. It is further ordered, that in applying the foregoing maximum passenger rates prescribed for the several railroads in Virginia, the railroad companies may charge and collect a minimum rate of ten cents per passenger for any single haul.

6. The payment of fares subject to the maximum rate herein prescribed shall entitle the passenger to the same transportation of baggage as now allowed by the carriers under, and in connection with the present rates and no steam railroad company operating in Virginia shall change or alter the rules governing the rights of passengers with respect to the transportation of baggage in Virginia, without the consent of the Commission first obtained.

7. Steam railroad companies operating in Virginia may charge and collect in addition to regular ticket rates the fixed sum of ten cents from all cash fare passengers who had been afforded reasonable opportunity for purchasing ticket before boarding train; provided that the conductor shall in all such cases deliver to passengers a receipt for the amount collected, redeemable at any ticket office of the company within thirty days from date of issue.

It is ordered, that the clerk of the Commission do forth-
132 with publish this order in full in one of the newspapers of general circulation published in the City of Richmond, once a week for four consecutive weeks, as required by law.

STATE OF VIRGINIA,
City of Richmond, To-wit:

I, Richard T. Wilson, clerk of the State Corporation Commission, do hereby certify that the foregoing is a true transcript from the judicial order book of the State Corporation Commission, of all orders entered in that certain proceeding lately depending before the said Commission under the name and style of:

Commonwealth of Virginia, at the relation of the State Corporation Commission,
v.
Steam Railroad Companies.

and designated in this office as judicial record 99.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the State Corporation Commission this 25th day of June, 1907.

R. T. WILSON, *Clerk.*

[Seal of the State Corporation Commission of Virginia.]

133 This day, R. T. Wilson, clerk of the State Corporation Commission of Virginia, to me personally known, appeared in person before me, the undersigned, a notary public in and for the City of Richmond, in the State of Virginia, and, before me, in my said city, subscribed and made oath to the foregoing certificate.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal this, the 25th day of June, 1907.

[NOTARIAL SEAL.] JNO. S. EGGLESTON,
Notary Public.

134 *Opinion Referred to in Foregoing Order.*

Passenger Rate Case.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
vs.
STEAM RAILROAD COMPANIES.

In the Matter of Fixing a Maximum Passenger Rate.

Conclusions of the Commission.

Relative to the proceedings to be observed by the State Corporation Commission before it passes upon the reasonableness of any rate which it proposes to put into effect, it is provided in section 156*b* of the Constitution of Virginia, as follows:

tion Commission before it passes upon the reasonableness of any rate which it proposes to put into effect, it is provided in section 156b of the Constitution of Virginia, as follows:

"Before the commission shall prescribe or fix any rate, charge or classification of traffic, and before it shall make any order, rule, regulation or requirement directed against any one or more companies by name, the company, or companies to be affected by such rate, charge, classification, order, rule, regulation or requirement shall first be given, by the commission, at least ten days' notice of the time and place, when and where the contemplated action in the premises will be considered and disposed of, and shall be afforded a reasonable opportunity to introduce evidence and to be heard thereon, to the end that justice may be done, and shall have
135 process to enforce the attendance of witnesses; and before the commission shall make or prescribe any general order, rule, regulation or requirement, not directed against any specific company or companies by name, the contemplated general order, rule, regulation or requirement shall first be published in substance, not less than once a week for four consecutive weeks in one or more of the newspapers of general circulation published in the city of Richmond, Virginia, together with notice of the time and place, when and where the commission will hear any objections which may be urged by any person interested, against the proposed order, rule, regulation or requirement; and every such general order, rule, regulation or requirement, made by the commission shall be published at length, for the time and in the manner above specified, before it shall go into effect, and shall also as long as it remains in force, be published in each subsequent annual report of the commission."

Proceeding in conformity with the foregoing provision of the organic law of the State, the commission, on the 31st day of July, 1906, issued the following notice:

Notice.

Offices of the State Corporation Commission.

RICHMOND, VA., 31*st Day of July*, 1906.

To the several steam railroad companies doing business in Virginia, and all persons interested:

Take notice that the State Corporation Commission will, in the city of Richmond, on Thursday, the first day of November, 1906, at 12 o'clock noon, in accordance with authority conferred by the Constitution of Virginia and the statutes enacted by the General Assembly of Virginia pursuant thereto, hear and consider any objections which may be urged against a rule, regulation, order
136 or requirement of the commission fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers over the line of any railroad company in this State, operated by steam, between points within the State of Virginia, said maximum rate to be observed whether the transportation be entirely over the line of one railroad company, or joint transportation over the lines of two or more companies; and whether

the contract for transportation of a passenger, or passengers be evidenced by an ordinary ticket between stations, by a mileage book, or otherwise; the commission to have, as authorized by law, the power and authority, from time to time, and as often as circumstances may require, to change or revise the rate, or by rules, regulations and requirements to provide for the more convenient and expedient putting into effect and proper observance of said maximum rate. At the said hearing and consideration of the said maximum rate of two cents per mile, the method, time and extent of promulgating and putting into effect of the same will be heard and determined by the commission, to the end that a maximum rate for passenger transportation may be put into effect and be made applicable to all steam railroad companies doing business in Virginia, and be properly observed by them in the transportation of passengers.

BEVERLEY T. CRUMP, *Chairman*,
H. C. STUART,
JOSEPH E. WILLARD,
Commissioners.

This notice was published once a week for four consecutive weeks in *The Times-Dispatch*, a newspaper of general circulation published in the city of Richmond.

In accordance with the foregoing notice, the leading railroad companies doing business in the State of Virginia appeared be-
137 fore the commission on the first day of November, 1906, and filed written, or printed, answers, in which were set out in detail the objections which they desired to urge against the proposed maximum passenger rate of two cents per mile. Following upon the filing of these answers, testimony was introduced before the commission from time to time, and all the issues arising in these proceedings were finally submitted to the commission for its determination on the 29th day of March, 1907.

The commission has given careful consideration to the objections made by the railroad companies involving solely questions of law, and to the most voluminous and detailed testimony adduced before it.

We have first to deal with two preliminary questions of law which are urged by the defendant railroad companies in their answers, and which must be first disposed of, as they challenge the right of the commission to take any action in this proceeding.

It is contended, in the first place, that the provisions of article XII of the Constitution of Virginia, providing for the creation, functions, duties and powers of the State Corporation Commission, are in violation of the fourteenth amendment to the Constitution of the United States, in that those provisions of the Constitution of Virginia, in their execution, deprive the defendant railroad companies of their properties without due process of law, and deny to them the equal protection of the laws. It is contended, in the next place, that as to all the defendant railroad companies whose charters were granted by the State of Virginia prior to the adoption of the new Constitution in July, 1902, there existed a contract between the State and the said railroad companies whereby it was agreed that the State

would not undertake to prescribe the tolls or charges upon the said railroad companies, and that the provisions of the Constitution and laws of the State of Virginia conferring upon the State Corporation Commission power to prescribe rates impaired the obligation of that contract, and that hence the commission has no power to fix or prescribe a maximum passenger rate in this proceeding.

138 The first objection above mentioned is based upon the fact that the Constitution of the State, in creating the State Corporation Commission, has conferred upon it judicial, executive and legislative powers; that the commission has authority to consider, prescribe and put into effect rates to be charged by the railroads, and has likewise power, as a judicial tribunal, to pass upon the reasonableness of the rates so proposed by it. The position is taken that a tribunal thus created is unlike the regular courts to which other persons in the State may submit their controversies, and that, in being required to come before such a tribunal, they are denied due process of law, and likewise equal protection of the laws.

It is unnecessary for the commission to consider this objection at length, as it has been recently passed upon by the Supreme Court of Appeals of Virginia. In the case of *Winchester and Strasburg R. R. Co. vs. Town of Strasburg*, decided by the Supreme Court of Appeals of Virginia on December 6, 1906, on appeal from the commission, this question was discussed at length by the court, and the provisions of the Constitution were upheld as valid, and not in violation of the fourteenth amendment to the Constitution of the United States, although the commission had clearly conferred upon it, to a certain extent, judicial functions as well as legislative and administrative authority.

The second objection urged by the defendant railroad companies as a matter of law is based upon certain provisions of the statutory law of Virginia, which have been in effect for many years, and which are now contained in sections 1202, 1240 and 1242 of the Code of Virginia of 1887. These sections of the Code are portions of the general railroad law of the State. It is provided in section 1240 that the charter of every company, which is governed by an act passed in March, 1837, prescribing certain general regulations for the incorporation of railroad companies, and the charter of every company theretofore or thereafter incorporated, which shall be governed by that chapter, "may be altered, modified, or repealed by any future legislature as may seem to it proper, except that no law

139 shall be passed for taking from a company its work or property without making to it just compensation, or for changing its tolls without its assent, in any other cases than such as are specially provided for in this chapter." In section 1242 it is provided that laws may be passed reducing the tolls of a railroad company when its net profits shall be such that dividends might be declared out of such net profits exceeding the rate of fifteen per centum per annum on the capital stock invested; but that no law shall reduce the tolls so as to prevent dividends at fifteen per centum per annum within thirty years from the time when the first dividends of profits were declared, or so as to prevent dividends of twelve per

centum per annum after the said thirty years, and before fifty years from the same time, or so as to prevent dividends of ten per centum per annum after the said fifty years.

It is alleged in the several answers that the railroad companies have not at any time earned such net profits as would enable them to declare the respective dividends mentioned in this statute. It is insisted that therefore, the State has contracted with the railroad companies that no laws should be passed changing their tolls or charges without their assent until such dividends as are contemplated by the statute have been earned. The question before the commission, therefore, is whether such a contract exists, and whether the present provisions of the Constitution of Virginia and the statutes enacted in pursuance thereof constitute an impairment of the obligation of that contract.

We do not deem it necessary to discuss this question at length, but content ourselves with referring to a recent case decided by the Circuit Court of the United States for the Western District of Texas. See *Houston and T. C. R. R. Co. vs. Storey*, 149 Fed. Rep. 499. In that case a bill was filed by the railroad companies to enjoin the enforcement of rates established by the Railroad Commission of Texas. The railroad companies alleged that there existed a contract between them and the State of Texas which precluded the State and
140 the railroad commission from prescribing the rates in question. The section of the Texas statutes relied upon was as follows:

"It shall be lawful for the legislature at any time to prescribe the rates to be charged for the transportation of persons and property upon any such road, should they be deemed too high, and may exercise the same power every ten years: provided, that no reduction shall be made unless the net profit of the company for the previous ten years, the expenditures of the company being *bona fide* and not with a view to defeat the operation of this section, shall amount to a sum equal to twelve per centum per annum upon its capital stock, and then so as not to reduce the future probable profits below said per centum."

The question of the existence of this contract arose upon a demurrer to the bill, and is not discussed at length by the court. The court refers to *L. & N. R. R. Co. vs. Kentucky*, 183 U. S. 503; *San Antonio Traction Company vs. Altgeld*, 200 U. S. 304, and *Chicago, &c., R. R. Co. vs. Minnesota*, 134 U. S. 455, and holds, upon the authority of these cases, that there was nothing in the charter of any of the companies which expressly or by implication exempted them from liability to future legislation as to the prescribing of rates, and hence no contract between the State and the railroads, respectively, arose; that all the companies, whether chartered by special act of the legislature or under the general laws of the State, took their charters subject to the general law, and to such changes as might be made in the general law, and subject to future constitutional provisions and future general legislation.

In *Louisville and Nashville R. R. Co. vs. Kentucky*, one of the

cases relied upon by the Circuit Court, the Supreme Court of the United States says:

"In the absence, then, of any express prior contract between the State and the company exempting the latter from future con-
141 stitutional enactments, and without conceding that even such a contract would avail to relieve the company from constitutional changes in the exercise of the general police power of the State, it is sufficient to say that we do not find in section 218 of the Constitution of Kentucky any impairment of an existing contract between the State and the plaintiff in error."

It will be seen, therefore, that the Supreme Court of the United States does not concede the validity of a contract of this character between the State and a railroad company. This is based upon the general principle that one legislature cannot make such a contract as will prevent subsequent legislatures, or a constitutional convention from the exercise of the police power. This is a question of great importance and interest which it is unnecessary for us to allude to further than to say that, in the present state of the law, this commission must necessarily uphold the right of the State of Virginia to exercise unfettered the police power inherently residing in the State government. An examination of the charters of the several railroad companies which have appeared in this proceeding leads the commission to the conclusion that there is no language in any of them by which a contract, either expressly or impliedly, could be held to have been made with the State whereby the State had relinquished its governmental power to fix and prescribe reasonable rates to be charged by the railroads, with the possible exception of the charter of the Richmond, Fredericksburg and Potomac Railroad Company. The charter of this company is a very old charter, and it has been held by our State court that, under this charter, the property of the railroad company is exempt from taxation. The power of taxation, however, and the right of the government to prescribe rates rest upon different principles.

The commission overrules the objection that the rate-making power as exercised by the commission in this proceeding constitutes an impairment of the obligation of a contract between the State and the railroad companies as to the Richmond, Fredericksburg and Potomac Railroad Company.

142 It is also to be observed that the charters of some of the defendant railroad companies fall within the scope of the decision of the Supreme Court of the United States in *Norfolk and Western Railroad Company vs. Pendleton*, 156 U. S. 667.

The further objection is made that the adoption and promulgation of the proposed maximum passenger rate would, because many interstate passenger rates are made, and necessarily made, on combinations of locals, or by use of the local rate as a factor, necessarily disturb and regulate the interstate commerce of railroads to such an extent as to come within the purview of the clause of the Federal Constitution relative to interstate commerce. The commission is of the opinion that this objection is clearly untenable.

The defendant railroad companies maintain that a maximum

passenger rate of two cents per mile in Virginia would be unreasonable, or confiscatory. It has been strongly contended before the commission, as to each of the railroads involved, that a lowering of the maximum passenger rate in effect upon each of those roads would so affect their earnings as to make the lower maximum passenger rate unreasonable and unjust.

At the same time that the commission has been considering the question of a maximum passenger rate, it has also had before it proceedings having for their object the promulgation and putting into effect of an uniform Virginia freight classification, and freight tariffs thereunder. These two proceedings are designated, respectively, as the passenger rate case and the freight rate case. The freight rate case was taken up first, and by agreement any of the testimony adduced before the commission in that proceeding may be regarded also as testimony in the passenger rate case. So that in passing upon this matter of a maximum passenger rate, the commission will consider the records in both cases and all testimony, exhibits, facts and statements contained in both records, so far as pertinent.

The testimony taken before the commission as to the organization, the financial conditions, the earnings, and the present and future economic conditions of each of the roads appearing before the commission, has been most voluminous, and the commission
143 cannot undertake to analyze and tabulate the testimony in detail. The commission desires, however, before referring to the evidence, to examine briefly the underlying principles, so far as they have been settled, by which the reasonableness or confiscatory character of a rate is to be judged.

By the Constitution and laws of Virginia, the State Corporation Commission is vested with the legislative authority to make a rate. It is settled by statute and by adjudication that the commission has the right, and is constrained by the provisions of our Constitution, to pass upon the judicial question of whether or not the rate proposed by it is reasonable. Under the terms of the Constitution of Virginia, full provision is made for notice to the railroad companies, and every opportunity is given to test before the commission the question of the reasonableness of the proposed rate. There can be no question but that due process of law is afforded to the railroad companies under the procedure by which the State Corporation Commission is bound, and, therefore, the objection sustained in *Chicago, Milwaukee and St. Paul Railroad Company vs. Minnesota,* 134 U. S., 418, does not apply to the method of this commission in prescribing and putting into effect a rate. This commission is required, sitting as a court, to pass upon the judicial question of whether or not the rate proposed by it is reasonable, and from its judgment on that question an appeal is given from it, as a judicial tribunal, to the Supreme Court of Appeals of the State. We are required, therefore, to determine whether or not a maximum passenger rate of two cents per mile in Virginia, in the intra-state business of the railroads doing business in the State, is reasonable, and if not, what maximum passenger rate is reasonable as to all of the roads, or as to the roads placed in several different classes. We must endeavor to determine briefly what are the principles by which the reasonableness of a rate

is to be judged, and what the term reasonableness, applied to rates, means as a judicial question.

As we shall see, it is somewhat of a misconception to speak of the rate itself as being reasonable, because the reasonableness of
144 the rate depends in the end upon whether or not the rate is so unreasonably low as to constitute a violation of the rights secured to the railroad by the fourteenth amendment to the Constitution of the United States.

Reduced to its proper analysis, the defense of the railroad companies rests upon their allegation that the maximum rate proposed in this proceeding would so reduce their earnings as to deprive them of a reasonable income from their property without just compensation, and that to so deprive them of a reasonable income without compensation is to deprive them of due process of law within the extended meaning of that term as used in the fourteenth amendment; and that they are denied the equal protection of the laws because they are deprived of a reasonable income from their property without compensation, while other persons receive compensation for property appropriated by the State. The argument is that, to deprive the railroad of a reasonable income from its property, is the same as taking property itself, and this would seem to be true. An unreasonable rate is such a rate as is calculated to reduce the railroad earnings below the point of reasonableness. The term reasonableness, therefore, in the end, applies rather to the earnings of the railroad than to the rate itself. Understood as above stated, it is very common and natural to speak of the rate itself as being reasonable or unreasonable, and is a short method of stating the question as to whether or not the rate will unreasonably reduce the earnings of the railroad company.

What are the general considerations by which the commission should be guided in determining, from the facts before it, whether or not a maximum passenger rate of two cents per mile will unreasonably reduce the earnings of the railroads and so take their property without just compensation, and deny them the equal protection of the laws?

It is impossible to answer this question briefly, and it is equally impossible to answer it clearly and completely. Being a question arising under the Constitution of the United States, the decisions of the Supreme Court of the United States should be looked to
145 as controlling. Quite a large number of cases have now been decided by that supreme tribunal of the country bearing upon the reasonableness or confiscatory nature of rates prescribed by State legislatures, or by State commissions. A rate which is unreasonable is often termed to be confiscatory, because, if it takes the property of the railroad without compensation, it is in the nature of confiscation. While the doctrines which should control and guide a judicial tribunal in passing upon the question as to whether a proposed rate will reduce the earnings of a railroad unreasonably cannot be said to have been clearly enunciated and well settled, yet the Supreme Court of the United States has, in several cases, been called upon to deal directly with these doctrines. Without referring to all of the cases which have been before that tribunal, we think it may

be said that the following are the leading cases in the sense that they mark the several *stadia* in the development of these doctrines:

Chicago, Milwaukee and St. Paul Railroad vs. Minnesota, 134 U. S. 418; *Reagan vs. Farmers' Loan and Trust Company,* 154 U. S. 362; *Covington and Lexington Turnpike Road Company vs. Sanford,* 164 U. S. 578; *Smyth vs. Ames,* 169 U. S. 466; *San Diego Land and Town Company vs. National City,* 174 U. S. 739; *Minneapolis and St. Louis Railway Company vs. Minnesota,* 186 U. S. 257.

These cases refer to the intermediate decisions in such a way as to give a very fair presentation of the progress of the court-made law, and of the present condition of the doctrines enunciated by the court on these subjects.

From the cases we deduce the following general principles:

1. The rate enacted by the legislature, or otherwise proposed by the State, stands, as other legislation or action of a State, as valid and constitutional, and hence the burden is upon the railroad company of showing that the rate so enacted or proposed will reduce its earnings to a point which amounts to the confiscation of its property, or to the taking of its property without compensation. *Atlantic Coast Line Railroad vs. Florida,* 203 U. S. 256.

146 2. The railroad company may show that the proposed rate, when applied to its business, will not yield it a reasonable return on the fair value of the property used in the services for which the rate is paid. The return or profit which the railroad company is entitled to must not, therefore, be reckoned upon the capitalization of the company, but upon the reasonable value, or fair value, of the property used by the railroad for the public convenience. In other words, in considering this question, the real value of the property must be looked to, and not a fictitious value based upon the issuance of securities.

3. The Supreme Court of the United States has repeatedly declared that the railroad's right to earnings must also be limited by considerations relative to the rights of the public. This has been declared in nearly all of the cases above named, and in others. It is held that rates must be just, both to the public and the railroad. Thus, in the Reagan cases, it was stated:

"It is unnecessary to decide, and we do not wish to be understood as laying down as an absolute rule, that in every case a failure to produce some profit to those who have invested their money in the building of a road is conclusive that the tariff is unjust and unreasonable."

Again, Justice Harlan, speaking for the court in the Smyth case, said, with reference to the contention that rates ought to permit the payment of dividends as well as of expenses:

"In our opinion, the broad proposition advanced by counsel involves some misconception of the relations between the public and a railroad corporation, is unsound in that it practically excludes from consideration the fair value of the property used, omits altogether any consideration of the right of the public to be exempted from unreasonable exactions, and makes the interests of a corporation maintaining a public highway the sole test in determining
147 whether the rates established by or for it are such as may be rightfully prescribed as between it and the public."

The court in other cases has made numerous utterances to the same effect.

4. Other circumstances and conditions recognized by the court as important in determining the reasonableness of a rate, or of a railroad's income are economic in their nature, as they pertain to the industrial condition of the country through which the road is built, and other such considerations. In the Minnesota case, reported in 186 U. S. 268, it is suggested that a case may occur in which the condition of the country is such that rates high enough to pay operating expenses would be exorbitant, and would not be justified. While this statement was made in the course of the opinion in a general way, and rather as *obiter dictum*, it shows what a wide scope of consideration the court has in determining questions of this character. In the Reagan cases it was held that, if the road was unwisely built in localities where there is not sufficient business to sustain the road, the public are entitled to reasonable rates, and should not be made to suffer for the bad judgment of the railroad builders, although those rates may not yield earnings sufficient to remunerate the investors. In the Covington case it was held that, although the competition of new lines may reduce the business of the older lines, still the older line would not be justified in making rates unjust to shippers and the public, but must be content with smaller earnings. In the Smyth case the court was called upon to determine the reasonableness of a proposed general freight schedule or tariff of rates. The opinion of the court is based very largely upon tabulated statements showing the average reduction in gross earnings which would follow from an application of the proposed new freight tariff to the business of the road during the three years preceding. To what extent the court had before it the facts relative to the economic conditions of the country and probable earnings of the roads in
148 the future does not appear. It would rather seem that the evidence, if any, on these questions was very meager, so that the court would not speculate as to the future.

The case this commission is now dealing with relates altogether to a general maximum passenger rate, while in the Smyth case the questions dealt with by the court were greatly complicated by the application of an entirely new freight tariff to the business of the several roads in Minnesota. It is clearly shown in our case that a reduction in passenger rates will produce increased travel, so that the application of the proposed maximum passenger rate to the past business of the companies does not constitute a test which absolutely determines the result of the reduction in the maximum passenger rate. It is manifest that in the Smyth case the court did not have before it the full evidence on this point which has been adduced before the commission. Increased business following a reduction in rates is a circumstance which necessarily has more weight in considering a passenger rate than in considering a system of freight rates; while freight traffic may be somewhat stimulated by a reduction of rates, yet the great bulk of it is controlled by general industrial conditions which apply with a less degree of force to passenger travel.

5. Another matter which is allowed consideration is the character

of the administration of the road. If the organization and operation of the road has not been business-like and economical and fair, the company's objection to the rates of the legislature, or of the commission is greatly weakened. In other words, all the expenditures of the company of every character charged against the gross earnings may be carefully examined, analyzed and criticised, as well as all the items coming under the general head of operating expenses. In the Reagan cases it was declared that, if there has been waste in the management of the road, if the company has been paying enormous salaries or has been indulging in unjust discriminations, resulting in general loss, it cannot fairly object to a reduction in its rates. In the Wellman case, 143 U. S. 345, the court declared that they
149 should be fully advised as to what had been done with the earnings of the road, "for if so advised, it might clearly appear that a prudent and honest management would, even under the rates prescribed, secure to the bondholders their interest, and to the stockholders reasonable dividends."

The foregoing are some of the leading circumstances and considerations by which we are to be guided in determining what maximum passenger rate would be a reasonable rate to apply to the railroads in Virginia in their intra-state traffic. To undertake to enumerate in great detail all the principles applicable to the rate cases as enunciated by the Supreme Court of the United States would require a most elaborate analysis of the various cases decided by that court, which would extend this opinion far beyond its proper limits. While reasonableness of the earnings of the railroad, which constitutes the crucial test in determining the validity of the proposed rate, must be judged by the principles so far laid down in the adjudications, yet in the end each case must depend upon its own circumstances. As was stated in the San Diego Land and Town Company case, quoting from the Covington case,

"each case must depend upon its special facts; and when a court, without assuming itself to prescribe rates, is required to determine whether the rates prescribed by the legislature for a corporation controlling a public highway are, as an entirety, so unjust as to destroy the value of its property for all the purposes for which it was acquired, its duty is to take into consideration the interests both of the public and of the owner of the property, together with all other circumstances that are fairly to be considered in determining whether the legislature has, under the guise of regulating the rates, exceeded its constitutional authority, and practically deprived the owner of property without due process of law."

The commission recognizes clearly the general principle established in *Smyth vs. Ames*, which seems to be now fairly well
150 settled; that is, that the railroad company is entitled to a fair return on the reasonable value of its property. What is the reasonable value of the property upon which the railroad company is entitled to the fair return or earnings is to be determined in the light of the general considerations above mentioned, and by all the principles so far laid down by the courts in considering these questions. In *Smyth vs. Ames*, it is stated that in determining the value

of the property used in the service of the public, and upon which a return is to be estimated, the following circumstances may be considered:

(1) The original cost of construction;

(2) The present, as compared with the original, cost of construction;

(3) The amount expended in permanent improvements;

(4) The amount, in market value, of the stocks and bonds issued by the corporation;

(5) The probable earning capacity of the road under the proposed rates;

(6) The amount of operating expenses; and

(7) Other matters which may be properly considered, according to the facts in each case.

The last consideration amounts to saying that each case must be judged by its own facts.

It is almost certain that the evidence before the commission presents every possible fact and consideration bearing upon the reasonableness of a maximum passenger rate of two cents per mile more fully and extensively than any of the cases which have been before the Supreme Court of the United States. After listening for several months with great care to the testimony adduced before the commission, and upon careful scrutiny of all facts appearing from the testimony, the tabulated statements and all other data and exhibits filed before the commission, we are of opinion that it will not unreasonably reduce the intra-state earnings of railroads in Virginia calculated upon a proper basis, should the commission put
151 into effect a maximum passenger rate less than the prevailing maximum rate, which, as to nearly all the roads, is three cents per mile.

The investigation on which the conclusions of the commission are based was perhaps the most extensive and exhaustive in its scope of any yet undertaken by rate-making bodies. The record in the freight rate cases, covering several thousand pages of typewritten matter, and the exhaustive record in the passenger rate cases, are considered together in so far as either of these records throws light on the subject before us. While the evidence has been carefully considered in its applicability to each individual company and its peculiar conditions, regarded separately, yet we do not deem it necessary or practicable to review all the evidence with the same detail in this paper, but will herein confine ourselves to an application to the evidence of those general principles which the courts have held should control the judgment and discretion of a rate-making body, deducing therefrom such conclusions as are fair, just and reasonable to the several groups of roads and dealing separately with a company only when some peculiar fact or condition differentiates it from the others of the group to which it otherwise belongs.

Proceeding along this line, we recognize not only the binding force, but the justice of the general principle that a carrier has the right to earn its operating expenses, and a fair return upon a fair value of the property used in the service. In order to reach a result

in this case which shall conform to this principle, a number of facts must be, as far as possible, ascertained and determined, among the most important of which are:

(1) The gross earnings of the carrier on all its Virginia business, both inter and intra-state;

(2) The expense of conducting such business;

(3) The gross earnings derived from its Virginia intra-state business;

(4) The expense of conducting such purely intra-state Virginia business;

(5) The fair value of the carrier's property used by it in all its Virginia business;

152 (6) The fair value of the carrier's property used by it in its intra-state Virginia business;

(7) A fair and reasonable margin of profit which the carrier should be allowed to earn upon its intra-state Virginia business.

It is manifestly impossible, in the very nature of the case, to ascertain exactly any one (except the third) of the seven matters above enumerated; but the testimony submitted by the defendant carriers in this proceeding, and the facts brought out in cross-examination by members of the Commission and by counsel for the Commonwealth enabled all those matters to be ascertained with sufficient practical accuracy for the purposes of this proceeding.

It may be proper to call attention at this point to the fact that, while the roads generally have stated their passenger *earnings* separately from their freight and other earnings, yet they have, with perhaps one exception, failed entirely to make any effort at a division between the *expense* of conducting passenger business and that of conducting freight, or other business. Thus we are without such information as will enable us to determine with accuracy the separate net profits of passenger, freight, mail, express and miscellaneous business, respectively. It is, therefore, necessary, in approaching a solution of the question before us, that we consider the earnings of the roads on all Virginia business of every kind on the one side, and the expense incurred in conducting all Virginia business of every kind on the other.

Taking up now the first of the said seven principal matters to be ascertained, namely, the gross earnings of the carrier on all its Virginia business, both inter-state and intra-state, it will be found that the evidence supplying this information, with reasonable accuracy, is furnished not only by the testimony of witnesses adduced in this proceeding, but by the operating reports of the several companies on file in the office of this Commission, and which are made a part of the record in these proceedings.

153 The establishment of the second principal fact above mentioned, viz: the expense of conducting the carrier's entire Virginia business—both inter- and intra-state—has been attempted by all the roads with varying accuracy, though every company has included in its operating expenses items which are not properly so classified.

The third matter, as to earnings derived from all Virginia intra-state traffic, has been satisfactorily fixed, in the case of all the roads

appearing in this proceeding by the testimony and statistics in the evidence; and some of the roads have undertaken to state separately their earnings from intra-state passengers and from intra-state freight.

We proceed, therefore, without difficulty until we reach the fourth principal matter, which is as to the expense of conducting purely intra-state business, freight, mail, express, passenger and miscellaneous. A great mass of testimony was submitted by several of the carriers in an effort to show that the cost of conducting intra-state business was materially greater than that of conducting all business, and therefore still greater than that of conducting inter-state business. Some of the roads claimed that this excess of expense on intra-state business was not less than fifteen per cent. of the expense of conducting all business of the system; others claimed that it cost not less than fifteen cents more to earn a dollar on intra-state traffic than on inter-state traffic. Some of the roads claimed that the excess cost was greater than this. It was contended on behalf of the roads that the Supreme Court of the United States had, in the case of *Smyth vs. Ames*, 169 U. S., page 466, established as a matter of law a particular ratio between the cost of different kinds of railroad business. That case, however, does not sustain any such construction, and the evidence in this case fails to show that the intra-state Virginia business of the railroads yields a smaller percentage of profit than does their inter-state business; and the Commission, upon the whole evidence, is of opinion that it is not so.

The argument advanced in support of the opposing theory is largely based upon the assumption that local traffic and intra-
154 state traffic are interchangeable terms; whereas, as a matter of fact, such is not the case, but, on the contrary, a large amount of intra-state traffic is carried by what might be termed "through movement," while a large amount of inter-state traffic, in whole or in part, by what might be termed "local movement."

It has been held by the Railroad Commission of Wisconsin, after an exhaustive investigation of the subject, that as much intra-state traffic is carried by through movement in that State as is carried by local movement, and that as much inter-state traffic is carried by local movement as by through movement. The evidence in this case shows that the same is very largely true as to Virginia traffic; hence we conclude that any evidence based upon the theory that intra-state traffic is approximately all local, or that inter-state traffic is approximately all through, is necessarily misleading.

It may be admitted, however, that a large proportion of intra-state traffic takes local movement, and is subject, therefore, to the relative high expense of short haul movement; but when we consider that the local or short haul rate is relatively much greater per ton per mile on a purely mileage basis than the through long haul rate, and when to this is added the further fact that the local movements are usually conducted between small points unaffected by competition, while the through movements are usually between large points, and, therefore, more or less influenced by competition, we must see that the excess of the local over the through rate becomes still greater. When we consider these things, it is apparent that the difference in

the rate in the two cases is certainly large enough to offset fully any probable difference in the cost of handling and transporting the two classes of traffic. Indeed, the existing short haul rates, which, as just stated, are rarely affected by competition, have always been fixed by the free and voluntary action of the carriers themselves, without restraint, and with a view to covering fully any excess cost which may be incident to traffic moving under these rates; and an examination of the rates applicable to short hauls will show that the traffic departments of the carriers have not been unmindful of
155 the difference between the cost of the short haul local movements on the one side, and the long through movements on the other, even though both movements are performed within the State. As illustrative of this, the testimony of Mr. Coxe, a witness of the Norfolk and Western Railway, shows that the average length of their through hauls was 230 miles, and the average length of their local hauls 68 miles; and the existing tariffs of that road show that the average charge per ton per mile under a 68-mile haul under the class rates is more than double the average charge per ton per mile on a 230-mile haul; and the same comparison when made between commodity rates illustrates the same principle. This is practically true of all the roads. From the evidence in these proceedings and from the considerations aforesaid, the commission finds that the profitableness of conducting intra-state freight traffic is proportionately not materially, if at all, less than the profitableness of conducting inter-state freight traffic.

So much for the freight traffic; but when we consider the passenger, mail, express and miscellaneous business of the roads, the case is much stronger. As a rule, the shorter hauls of passengers are conducted on the regular ticket rates, which are the higher rates; but the assumed additional cost of conducting local *freight* traffic, growing out of the fact that a great part of it must be handled in and out of cars and stations, will not apply to *passenger* traffic, since passengers handle themselves. In addition to this, there are many expenses connected with the through passenger service that are not connected with the local passenger service, such as vastly more expensive train equipment, the maintenance of passenger soliciting offices off the line of the road, the maintenance of a very much higher class of service, &c., &c.

We find that a large amount of intra-state passenger traffic is conducted on through trains, which are claimed to move at a minimum cost per passenger per mile. We find also that a considerable volume of inter-state passenger traffic is conducted on local trains, which are claimed to move at a higher cost per passenger per mile.
From these and other considerations, we cannot escape the
156 conclusion that the Virginia intra-state passenger traffic of each road involved in these proceedings is, in the aggregate, fully as profitable, in proportion, to such road as is its inter-state passenger traffic. As to the mail and express business of the railroads, the evidence is clear, and from the nature of the business it is manifest that the local mail and express business, so far as the railroad company is concerned, costs no more than does the through mail and express business,—the rates being higher, however, on local

than on the through, it follows that the local mail and express business of the roads is more profitable than the through.

Finally, the miscellaneous earnings of the road, consisting chiefly of such things as rentals, demurrage, switching, &c., are all purely local, and not, strictly speaking, items of transportation at all, but, in the matter of profitableness, this branch of the road's business is the same whether the traffic upon or in connection with which it is performed, is local or through.

Having seen that, all things considered, the profitableness of intra-state freight traffic in Virginia is proportionately not materially, if at all, less than that of inter-state Virginia traffic; that the profitableness of Virginia intra-state passenger, mail, express and miscellaneous business is proportionately not materially, if at all, less than that of inter-state Virginia passenger, mail, express and miscellaneous business, it follows that the profitableness of the *whole* Virginia intra-state business is proportionately not materially, if at all, less than that of the whole Virginia inter-state and intra-state business combined.

This conclusion is strengthened by consideration of the fact that the great bulk of the inter-state traffic in Virginia is of such character as is moved by the heaviest power and equipment, representing the heaviest burden, and which imposes the necessity for large expenditure of money on road-bed, track, bridges and terminals, thereby increasing the investment in property far beyond the figure which would be necessary if all traffic were of the same character as average intra-state traffic. To this may be added the fact that the cost of the heavier power and equipment used in transporting average inter-state traffic is also greatly in excess of the cost of power
157 necessary to, or actually used in, the movement of average intra-state traffic, to say nothing of the wear and tear on the rails and on the road-bed incident to the movement of heavier inter-state traffic.

Having thus compared the profitableness of Virginia intra-state business with that of Virginia inter-state business, and having seen that there is no material difference in the comparative profitableness of the two, it is plain that the entire operating expense of doing all business in Virginia should be apportioned between inter- and intra-state business, in the proportion which those branches of the road's business bear to each other in amount—that is to say, in the proportion which the gross earnings from inter-state business bears to the gross earnings from intra-state business: and since the intra-state Virginia business contains a larger proportion of short hauls than does the inter-state Virginia business, it follows that the amount of the road's plant—railroad and equipment—employed in earning one dollar of intra-state gross revenue is certainly not more—and is probably materially less—than that used in earning one dollar of Virginia inter-state revenue.

From these considerations it follows that the percentage of the entire expense of all Virginia business which Virginia intra-state business should bear, and the percentage of the entire property of the company employed in its Virginia business, upon which the intra-state Virginia business should be required to yield a fair re-

turn, is the same percentage which the gross earnings of the intra-state Virginia business bears to the gross earnings from all the Virginia business. When it is considered that the intra-state and inter-state business of the roads are inextricably mingled, being carried on by the same employees, at the same time, with the same plant and instrumentalities, over the same parts of the road, often in the same train, and not infrequently in the same car—when these things are considered, it is believed that no more fair, just, reasonable and correct basis can be found upon which to apportion the common burden and earning requirements of the whole business between the inter-state and intra-state branches thereof, than the basis above indicated, to-wit, that of gross earnings; and the Commission,
158 from a long and painstaking study of the facts and conditions, is of the opinion that if this basis is unfair to either branch of the business it is to the intra-state branch.

With a view to the application of this principle of apportionment to some of the principal roads in Virginia, we take the following tables:

1. Norfolk & Western Railway Company.

Virginia.

Miles operated, 1,054.00 miles.	Year 1906. Per mile of road.
Freight revenue	$12,829 15
Other freight earnings	27 88
Total freight earnings	$12,857 03
Passenger revenue	$2,147 99
Other passenger earnings	408 41
Total passenger earnings	$2,556 40
Total gross earnings	15,413 43
Operating expenses:	
Maintenance of way and structures	$1,721 71
Maintenance of equipment	2,728 25
Conducting transportation	4,459 69
General expense	283 86
Total operating expenses	9,193 51
Net income from operation	6,219 92
Other income from operation	99 93
Total income from operation	$6,319 85
Taxes	440 17
Balance	5,879 68

159	Interest on bonds	1,649 29
	Balance for stock	4,230 39
	Dividends on stock	1,879 98
	Surplus	$2,350 41

2. CHESAPEAKE & OHIO RAILWAY COMPANY.

Virginia.

Miles operated, 736.9 miles.	Year 1906. Per mile of road.
Freight revenue	$10,195 13
Total freight earnings	$10,195 13
Passenger revenue	2,344 56
Other passenger earnings	435 10
Total passenger earnings	$2,779 60
Total gross earnings	12,974 73
Operating expenses:	
Maintenance of way and structures	$1,373 35
Maintenance of equipment	2,338 09
Conducting transportation	3,899 57
General expenses	223 81
Total operating expenses	$7,834 82
Net income from operation	$5,139 91
Other income from operation	230 76
Total income from operation	$5,370 67
Taxes	437 34
Balance	$4,933 33
160 Interest on bonds	3,307 41
Balance for stock	$1,625 92
Dividends on stock	536 76
Surplus	$1,089 16

3. ATLANTIC COAST LINE RAILROAD COMPANY.

Virginia.

Miles operated, 137.54 miles.	Year 1906.
	Per mile of road.
Freight revenue	$11,968 96
Total freight earnings	11,968 96
Passenger revenue	2,544 74
Other passenger earnings	319 40
Total passenger earnings	$3,064 14
Total gross earnings	15,033 10
Operating expenses:	
Maintenance of way and structures	$2,161 00
Maintenance of equipment	1,966 64
Conducting transportation	5,651 09
General expenses	417 80
Total operating expenses	$10,196 53
Net income from operation	4,836 57
Other income from operation	623 08
Total income from operation	$5,459 65
Taxes	343 74
Balance	$5,115 91
161 Interest on bonds	1,009 71
Balance for stock	$4,106 20
Dividends on stock	646 59
Surplus	$3,459 61

4. SEABOARD AIR LINE RAILWAY.

Virginia.

Miles operated, 157.50.	Year 1906.
	Per mile of road.
Freight revenue	$8,670 70
Total freight earnings	8,670 70
Passenger revenue	1,238 88
Other passenger earnings	453 21
Total passenger earnings	$1,692 09
Total gross earnings	10,362 79

Operating expenses:

Maintenance of way and structures	$1,020 15
Maintenance of equipment	1,231 65
Conducting transportation	3,882 61
General expenses	207 41
Total operating expenses	$6,341 82
Net income from operation	4,020 97
Other income from operation	78 04
Total income from operation	$4,099 01
Taxes	380 68
Balance	$3,718 33
Interest on bonds	1,076 11
Balance for stock	$2,642 22
162 Dividends on stock	
Surplus	$2,642 22

5. SOUTHERN RAILWAY COMPANY.

In Virginia.

Miles operated, 965.53. Year 1906.

	Per mile of road.
Freight revenue	$4,246 10
Total freight earnings	4,246 10
Passenger revenue	2,503 50
Other passenger earnings	962 92
Total passenger earnings	$3,466 42
Total gross earnings	7,712 52

Operating expenses:

Maintenance of equipment	1,083 69
Maintenance of way and structures	$1,082 65
Conducting transportation	2,595 02
General expenses	248 06
Total operating expenses	$5,009 33
Net income from operation	2,703 19
Other income from operation	183 21
Total income from operation	$2,886 40

Taxes	236 64
Balance	$2,649 76
Interest on bonds	1,393 86
Balance for stock	$1,255 90
Dividends on stock	601 26
Surplus	$654 64

163 6. RICHMOND, FREDERICKSBURG AND POTOMAC RAILROAD COMPANY.

Miles operated, 83.20—all in Virginia. Year 1906.

	Per mile of road.
Freight revenue	$12,331 87
Total freight earnings	$12,331 87
Passenger revenue	6,953 07
Other passenger revenue	1,927 28
Total passenger earnings	$8,880 35
Total gross earnings	21,212 22
Operating expenses:	
Maintenance of way and structures	2,021 96
Maintenance of equipment	2,270 25
Conducting transportation	8,708 77
General expenses	560 28
Total operating expenses	$13,561 26
Net income from operation	$7,650 96
Other income from operation	
Total income from operation	$7,650 96
Taxes	10 86
Balance	$7,640 10
Interest on bonds	1,256 25
Balance for stock	6,383 85
Dividends on stock	3,171 16
Surplus	$3,212 69

164 7. WASHINGTON-SOUTHERN RAILWAY COMPANY.

In Virginia.

Miles operated, 33.83.	Year 1906.
	Per mile of road.
Freight revenue	$14,559 14
Total freight earnings	14,559 14
Passenger revenue	6,015 26
Other passenger earnings	2,502 54
Total passenger earnings	$8,517 80
Total gross earnings	23,076 94
Operating expenses:	
Maintenance of way and structures	$1,851 56
Maintenance of equipment	2,410 81
Conducting transportation	12,446 51
General expenses	547 27
Total operating expenses	$17,256 15
Net income from operation	5,820 79
Other income from operation	91 04
Total income from operation	$5,911 83
Taxes	524 34
Balance	5,387 49
Interest on bonds	4,456 24
Balance for stock	$931 25
Dividends on stock	2,177 21
Surplus	

165 8. NEW YORK, PHILADELPHIA & NORFOLK RAILROAD COMPANY.

In Virginia.

Miles operated in Virginia, 95.00.	Year 1906.
	Per mile of road.
Freight revenue	$13,227 28
Other freight earnings	193 44
Total freight earnings	$13,420 72

Passenger revenue	2,424 11
Other passenger earnings	978 28
Total passenger earnings	$3,402 39
Total gross earnings	16,823 11
Operating expenses:	
Maintenance of way and structures	$2,170 87
Maintenance of equipment	2,257 58
Conducting transportation	6,245 22
General expenses	657 49
Total operating expenses	$11,331 16
Net earnings from operation	$5,491 95
Other income from operation	13 65
Total income from operation	$5,505 60
Taxes	313 23
Balance	5,192 37
Interest on bonds	1,285 71
Balance	$3,906 66
Dividends on stock	1,964 28
Surplus	$1,942 38

166 From an inspection of these tables, it will be seen that the Norfolk and Western Railway Company shows gross earnings for the year ending June 30, 1906, on all its Virginia business, of $15,413.43 per mile, and net earnings on the same business of $5,879.68 per mile, all based upon the freight and passenger rates in effect during that fiscal year. From this it appears that the net income of this line is a little more than 5⅞ per cent. on a valuation of $100,000 per mile of its 1,054 miles of track located and operated in Virginia.

That the Chesapeake and Ohio Railway Company for the same year, figured on the same basis, shows gross earnings of $12,794.73 per mile, and net earnings of $4,933.33 per mile; giving a net income of approximately 5 per cent. on a valuation of $100,000 per mile on its 736 miles of track located and operated in Virginia, some 85 miles of which is mere trackage rights over the lines of the Southern and Washington Southern Railroad Companies from Orange to Washington.

That the Atlantic Coast Line Railroad Company, for the same year, figured on the same basis, shows gross earnings of $15,033.10 per mile, and net earnings of $5,115.91 per mile, giving a net income of approximately 5⅛ per cent. on a valuation of $100,000. per mile of its 137 miles of track located and operated in Virginia;

That the Seaboard Air Line Railway Company, for the same year, figured on the same basis, shows gross earnings of $10,362.79 per

mile, and net earnings of $3,718.33 per mile, giving a net income of approximately 3¾ per cent. on a valuation of $100,000. per mile of its 157 miles of track located and operated in Virginia;

The Southern Railway Company, for the same year, figured on the same basis, shows gross earnings of $7,712.52 per mile, and net earnings of $2,649.76 per mile, giving a net income of approximately 2⅔ per cent. on a valuation of $100,000. per mile on the 965 miles of track located and operated in Virginia; the expenses of some 75 miles of which, from Orange to Alexandria, are partly borne by the Chesapeake and Ohio Railway Company;

167 The Richmond, Fredericksburg and Potomac Railroad Company shows gross earnings of $21,212.22 per mile, and net earnings of $7,640.10 per mile, or approximately 7⅝ per cent. on $100,000. per mile of its 83 miles of track located and operated in Virginia;

That the Washington-Southern Railway Company shows gross earnings of $23,076.94 per mile, and net earnings of $5,387.49 per mile, or approximately 5⅜ per cent. on $100,000. per mile of its 36 miles of track located and operated in Virginia, after deducting a grossly exorbitant charge for its interstate traffic over the Potomac River bridge, which, as well as the Washington-Southern Railroad, is controlled by the Pennsylvania Railroad Company;

That the New York, Philadelphia and Norfolk Railroad Company shows gross earnings of $16,823.11 per mile, and net earnings of $5,192.37 per mile, or approximately 5 1-5 per cent. on $100,000. per mile, after making many unusual and unwarranted deductions from net income.

These amounts are based upon the companies' own figures, but in most, if not in all, cases it appears from the evidence that many thousands of dollars included by the roads in these operating expenses and other deductions from gross revenue in order to arrive at their net revenue as they report it, should not, for the purpose of this proceeding, have been deducted from the gross revenue. And the commission finds from the evidence, that, as a matter of fact, the net revenue of each road is more, and in some cases very considerably more, than that reported by them as given in the foregoing tables. In view, however, of the fact that even the roads' own reports of their respective net revenues amply justify the action of the commission in this proceeding, the commission does not deem it necessary in this paper, to discuss or point out the extent to which the real net revenues of the several roads is greater than they calculate and report it.

Assuming, for the moment and for the purpose of comparison, that 6 per cent. is an adequate net return on the value of the property of the roads above enumerated, it appears that this rate is

168 being earned by the several roads on the following valuations per mile respectively, stated in round figures:

Norfolk and Western Railway Company, 6 per cent. on $98,000. per mile.

Chesapeake and Ohio Railway Company, 6 per cent. on $82,000. per mile.

Atlantic Coast Line Railroad Company, 6 per cent. on $85,000. per mile.

Seaboard Air Line Railway Company, 6 per cent. on $62,000. per mile.,

Southern Railway Company, 6 per cent. on $45,000. per mile.

Richmond, Fredericksburg and Potomac Railroad Company, 6 per cent. on $127,000. per mile.

Washington-Southern Railway Company, 6 per cent. on $90,000. per mile.

New York, Philadelphia and Norfolk Railroad Company, 6 per cent. on $85,000. per mile.

It must be borne in mind that roadbed and track as shown in miles is not the only investment of these companies; to this chief item of costs must be added also the fair value of equipment, station buildings, freight depots, warehouses and terminals, and any other item of property which *are* necessarily incident to conducting a transportation business. It is difficult to ascertain the exact values of these last named items, but taking the assessed value of these items for taxable purposes in Virginia, as shown by the records of this commission, and distributing this value on a mileage basis, it is found that it only represents the sum of $3,797.78 per mile on the Southern Railway, which is the only road in the group, which is on an earning basis low enough to be possibly affected by this question.

Having shown by the above tables the net earnings per mile of the roads named respectively, on their entire Virginia business, and that no greater percentage of the company's plant is employed in earning a dollar of intra-state gross revenue than in earning a
169 dollar of interstate revenue, it follows that, if the net earnings of the companies from all their Virginia business, yield them a certain return upon a given valuation of their property employed in earning that revenue (as the figures just given show), then the net earnings upon the intra-state branch of that business must also yield the same return upon a similar valuation of the property employed in earning that intra-state revenue.

We now reach the question as to how far the net income of the several roads as above shown may be regarded as a fair and reasonable return upon a just and fair valuation of the property employed in earning it; and in order to answer this question, we must ascertain and determine what is a fair valuation of such property. Various bases have been suggested and considered by courts and rate making bodies for the ascertainment of the values of railroads and railroad properties.

The bond and stock basis has been suggested; but this is probably the most unreliable and untrustworthy of all measures of value of the property.

The cost of original construction has also been suggested; but this method is subject to various objections, among which is the consideration that the facts from which to determine original cost are usually too remote to be available. Even the cost of reproduction is not always a fair or reliable criterion, seeing that the market price of property, labor and material is a variable and constantly fluctu-

ating quantity; and even if it were not, yet, whether the basis should be the cost of reproduction of the property anew, or the cost of reproduction of the property in its present state, is a question of much difficulty and doubt.

Since the roads by their accounting methods, charge enormous sums annually to maintenance of roadway and structures, and to maintenance of equipment, the aggregate of which sums is annually deducted from the gross revenues in arriving at the reported income, and has been deducted in each case from the net incomes above given, it would seem that they have protected themselves and are continuing to protect themselves financially against the con-
170 sequences of natural depreciation of their property. The evidence shows that as to most, if not all, of the roads, even improvements and betterments were to a greater or less extent deducted also from the gross revenues before arriving at the reported income.

Under the laws of this State it was, for many years, the duty of the Board of Public Works, composed of the Governor, the Auditor of Public Accounts and the Treasurer of the Commonwealth, to assess for taxation the value of all railroad property in this State; for four years past this duty has developed upon this commission, which, in the performance thereof, has made careful personal inspections of all the railroad property in the State, and availed itself of every practical source of information as to the true value of that property, and have assessed it as the facts and circumstances of the case would, in their opinion, justify, with a view of deriving therefrom for the State the fair amount of taxes, to which, under the law, it was entitled. In these annual assessments, the interests of the State is naturally in the direction of increasing, while that of the railroad companies is equally in the direction of diminishing, the value of the railroad property, therefore, it would seem but reasonable to assume that the amount of such assessments should certainly not be regarded as unreasonably low, at least so far as the railroad companies are concerned.

The assessment of railroad property in Virginia under the old Board of Public Works was in no single instance more than $15,000.00 per mile, and, under this commission, has never been up to and including the year 1906 more than $16,000.00 per mile on single track roadway proper, and in many instances it is much less.

The Commission does not hold that the taxable value of railroad property and its commercial value is or should be the same, any more than in the case of any other property, but it is manifestly true that such values should bear some reasonable relation to each other, and that the assessed value of such property as ascertained year after year in this State and in many others, where conditions are
171 similar, and with reference to many different roads, should be considered and given due weight—not as alone determining, but—as an element and a very important element in determining the true commercial value of such property. Assessments may indeed be erroneous, but it is wholly improbable that when the

assessments made by States for the purpose of taxation are considered with reference to many different years, and for many different roads, it would be found that the State, for every year and every road, has made an error against itself and in favor of the road, and still more improbable would it be that the railroads had first discovered and pointed out the error.

One of the important duties of this Commission is to constantly inspect all the railroads of this State and to keep itself thoroughly posted with reference to the physical condition of the track, roadbed, structures and equipment of such property. This duty has been conscientiously and regularly performed by this body for a number of years. The necessary result of this has been to inform and keep informed this Commission of the condition and value of the railroad property of this State, as fully as any personal knowledge of property could enable one to judge of its value. This personal knowledge the Commission deems it right and proper that it should—not rely absolutely upon, but should—avail itself itself of in arriving at a fair and just estimate of the true commercial value of the property.

Few or no questions are more delicate or difficult of determination than the true commercial value of railroad property as a proper basis for rate fixing. Many persons have sought to evolve some simple and ready rule for making the estimate, and many different criteria have been suggested; but, in the opinion of this Commission, there is no single element or consideration which can be accepted as a safe or reliable guide, but that due weight and consideration must be given to many different ones.

The law as laid down by the courts requires the ascertainment of *some* value of the property as a basis upon which, as a matter of constitutional right, the company is entitled to earn a fair
172 return—in any event, at least so far as that can be done with reasonable rates. The law must contemplate then that there is some practicable method by which this value can be ascertained, and this Commission knows of no better, or more reliable method than to give due and proper consideration and weight to the following matters among others.

1st. The original cost of the property so far as it is shown.

2nd. The amount of the capital and bonded debt of the company applicable to the property in this State.

3rd. The market value of such stock and bonds.

4th. The cost of reproducing the property anew so far as it is shown.

5th. The cost of reproducing the property in its present condition so far as it is shown.

6th. The properly assessed value of the property for purposes of t-xation.

7th. The personal knowledge of the property by the Commission.

No one of these considerations should control, but due weight should be given to each. That some are entitled to much more weight than others is obvious, and that some are more easily ascertainable than others is equally obvious. For instance, the original cost of a railroad and its equipment is often absolutely unascertain-

able, and it is wholly impracticable to ascertain the cost of reproduction—either anew or in its present condition. Even if all of these matters were known, they could not safely be relied upon absolutely, because in many cases, particularly in this State, the property was acquired by the present owner at much less than its original cost or at which it could now be reproduced in any form.

Probably the most unreliable and misleading of all the foregoing considerations is the amount or present market value of the stock and bonds of the road. It is well-known that railroad stocks are rarely, if ever, issued for full value. In fact the general rule is that the money put into railroad property is wholly represented by its bonds, the stock being issued as a bonus and represents the
173 control, rather than the contribution to the property. Even when this is not fully true, it is impossible to tell to what extent it is true, especially when the present company, as is often the case, is the result of the merger, consolidation or re-organization of one or more corporations. Nor should the present market value of the stock at all be a controlling guide; because that value is constantly fluctuating, is readily and often manipulated, and depends much more upon the earning capacity of the road than upon the value of the property employed. It would, therefore, be but reasoning in a circle to fix the earning capacity by the value of the property employed, and then, in turn, ascertain that value by the earning capacity as reflected in the market value of the securities.

These are the considerations which have led the Commission to consider all the foregoing matters as well as everything else in the evidence tending to throw light upon the question, but to give varying weight to each consideration, their final judgment being a composite result of them all.

By this process, the Commission has arrived at the conclusion that the entire Virginia property of no railroad company assessed by it is really worth more than $50,000.00 per mile for the entire mileage in this State, while the property of most of such companies is worth less. The Southern Railway Company's entire property, composed as it is, largely of branch lines of cheap construction and not well maintained, on which is operated light and rather cheap class of equipment, is, in the opinion of the Commission, worth greatly less on its entire mileage in this State. The assessments of the property of the Southern Railway, made by the Commission for the year 1906, are as follows:

Roadway and track	$11,348.15 per mile.
All other property	3,797.78 per mile.
Total assessment of physical property	$15,145.93 per mile.

The Virginia revenue law provides for the payment an-
174 nually of a franchise tax at a rate of one per cent. on Virginia gross transportation receipts of the railroads. If we consider the amount of this franchise tax paid by the Southern Railway to the State, and capitalize it on the basis of $1.25 per $100.00 (estimated to be the minimum average rate of taxation in

Virginia, State, county and municipal, on property generally), we would have the additional sum of $5,708.45 per mile. Adding this sum to the assessed value of all the physical property above given, we have a total valuation of $20,854.38 per mile, reached upon a basis which puts the Southern Railway upon the same plane as other tax payers of the State. The Commission is clearly of opinion that the franchise tax should not be considered in this connection, and only includes it in the figures above given for the purpose of showing the outside valuation of the Southern Railway for taxable purposes from any standpoint from which the subject might be considered.

The Commission does not propose to fix for each road, or any of them, the *least* sum to which they could be restricted as a basis for earning capacity, without transgressing the constitutional limit of confiscation. As to how far this side of that limit the regulation should stop, is, in the opinion of the Commission, a matter of legislative discretion to be exercised by it as it deems wisest and best for the public welfare, not overlooking the fact that the railroads themselves and the holders of their securities are a part, and a very important part of that public.

In the exercise of this discretion, the Commission deems it the height of unwisdom and mistaken policy to restrict the railroad companies to the utmost point legally permissible or anywhere near that point. On the contrary, the Commission deems it manifestly wise and proper that the railroads, as one of the greatest engines of civilization and prosperity, on the successful operation of which practically every industry and every community is largely dependent, should be given every reasonable encouragement and dealt with as liberally as the public interests and the welfare of their patrons will permit.

175 The Commission, therefore, in its final action in these proceedings has been guided by these considerations and has decided upon the reduction in the maximum limit to passenger fares which it orders only after assuring itself, that, even if such reduction is not fully compensated by the consequential increase in business the roads will still be left, upon their intra-state Virginia business, such a margin of profit upon any fair value of the property employed as will enable their business to compare favorably in profitableness with any of the large, or standard, businesses of the country, and not even approach anywhere near the legal limit of confiscation.

But the Commission is convinced from the evidence in these proceedings, that this reduction in the maximum limit of passenger fares, when put into effect in good faith by the carriers, will not result in such a loss of revenue as would first appear from a consideration of the difference between the present maximum and the one proposed.

No branch of transportation is so responsive to lower fares as the carrying of passengers. Of course, there is a certain amount of travel which is compelled to move regardless of fares; but a very large amount of railroad traveling is the direct result of attractive rates which enable and encourage people to move about. None are

better aware or more appreciative of this fact than the railroad companies themselves, who, to encourage and increase this travel, have for many years voluntarily sold a large part of their transportation at very much less than the existing maximum limit of three cents a mile. In fact, the evidence shows that but a comparatively small part of the rates actually realized are as much as three cents, and that a very large part of them have long been from two cents a mile down. In States where a maximum limit has been established by law within the last one or two years, some roads have voluntarily withdrawn all their previously existing rates of less than two cents, thus cutting themselves off from the benefit of all the traffic for which these low rates were designed, and which moved only because of it.

176 These lower rates consisted for the most part of excursion rates and special rates to fairs, conventions, and other public gatherings. It is perfectly obvious that the roads had theretofore granted these lower rates because of the plain business considerations that it was better to carry the people, for whom these fares were designed, at these low rates than not at all, and that this kind of passenger traffic only moved under and because of these low rates, in view of the fact that it was not obliged to move at all. These considerations are obvious just as applicable and controlling under a two-cent maximum as under a three-cent maximum, and therefore those roads which, for any reason, withdrew their former rates of less than two cents, did so voluntarily and not because the two cent limit required or forced them to it, and thus by their own act deprived themselves of that large and profitable part of their passenger traffic which only moves because of these low rates. Except when this was done, the evidence fails to show that any standard road has suffered any substantial diminution, but shows that some of them have derived a positive increase, of their passenger revenues under a two-cent maximum fare as compared with their revenues under a three-cent maximum fare.

After a careful study of the evidence and of the entire railroad situation in this State, the Commission believes, under the maximum limit of passenger fares as prescribed by it in this proceeding,

First. That the revenues of the railroad companies affected will not be necessarily diminished as compared with their existing revenues, but may be increased;

Second. That, if their revenues be in fact diminished thereby, they will not be sufficiently diminished to work any unjust or unreasonable deduction in their net earnings; and

Third. That since the effect of such maximum limit will not be to work a greater reduction in the companies' net earnings than they could be just and reasonably called upon to bear, such reasonable reduction should be applied as far as practicable, to such rates as are best able to bear it, and most generally affect public interest. Ap-

177 plying this principle to the evidence in the case, so far as adduced, we reach the conclusion, and there is little, if any, evidence to the contrary, that it is proper to make the bulk of reduction in passenger fares, especially since such reduction will be more surely and readily compensated for by increased business, than if a similar reduction had been made in other classes of traffic.

The increased passenger revenues which must necessarily result from the withdrawal of free transportation under the operation of recently enacted laws, may be an item worthy of consideration in this connection.

So long as a company earns a satisfactory net profit from all of its intra-state business, taken in its entirety, it cannot legally or reasonably complain that more of this profit is earned out of one particular branch of that business than out of some other branch. As to which branch of intra-state business, or what particular item or items of transportation, should bear the heaviest, and which the lightest burdens, considered from the standpoint of public interest, is for the commission, and not for the railroad companies to decide, so long as the aggregate net revenue left to the companies is adequate, just and reasonable.

The commission is of opinion that a maximum rate of two cents per mile for the transportation of all intra-state passengers is not unreasonably low for the roads enumerated in the tables above given, numbered from 1 to 8, inclusive, considering the proportionate value of the property used by them in intra-state business and the character of service rendered to intra-state passengers. These roads will be specified by name in general schedule "A," hereinafter appearing. This conclusion is based upon the business of the roads, respectively, as shown by the evidence in this case, and by the operating reports for the years 1905 and 1906. It is true that the net earnings of the several railroads enumerated in this group are variable as to amount, and the presumption might arise that the roads showing the smaller earning power should not be classed with those showing the larger. We feel that this view is defeated by the fact that the larger earning roads, with one or two exceptions, are using property
178 of much greater value per mile than that used by the smaller earners. In view, however, of the fact that the net income per mile of the Southern Railway Company is small in comparison with the other roads in the same group, it is deemed reasonable to allow, and there will accordingly be allowed, a maximum rate of two and one-half cents per mile for intra-state passengers transported on the following divisions, or branches, of the said Southern Railway Company, viz:

Norfolk Division, extending from Pinner's Point to Danville, 204 miles;

Franklin Branch, extending from Franklin Junction to Rocky Mount, 37 miles;

Claremont Branch, extending from James River Junction to Claremont, 50 miles.

So that the two and one-half cent rate will apply to 291 miles, or 30 per cent. of Virginia mileage of the Southern Railway Company.

From a careful consideration of the evidence in this case, and of the operating reports of the Virginia and Southwestern Railway Company, and Louisville and Nashville Railroad Company, we feel constrained to include, and accordingly will include them in the group of roads which are limited to a maximum passenger rate of

two cents per mile. The operating reports of these two roads, on their face, might not seem to justify this reduction; but the facts appearing on cross examination relative to the method of accounting in use by these two roads fully justify a reduction of their passenger rates to two cents per mile, and they will so appear in general schedule "A."

The commission is further of opinion that a maximum passenger rate of three cents per mile should be observed as to intra-state passengers by the Winchester and Potomac Railroad Company, Winchester and Strasburg Railroad Company, and the Valley Railroad Company of Virginia. It having appeared in the evidence that a mileage book is sold by the Baltimore and Ohio Railroad Company at a rate of two cents per mile, available on these three roads, it is thought that this voluntary reduction, taken in connection
179 with the slight one herein made, is as much as the financial showing of these roads will justify at present. These roads appear in general schedule "B." In this connection it might be proper to state the net income of these three roads from all sources for the year ending June 30, 1906, as shown by the operating reports on file in this office, are:

Valley Railroad Company of Virginia, 6 per cent. on a valuation of $14,000 per mile.

Winchester and Potomac Railroad Company, 6 per cent. on a valuation of $17,500 per mile;

Winchester and Strasburg Railroad Company shows a deficit after paying operating expenses.

If we treat these three lines as a part of the Baltimore and Ohio System, and consolidate their earnings, we find that under the maximum passenger rate of three and one-fourth cents now in effect on these roads, the Baltimore and Ohio net earnings from all Virginia business, inter- and intra-state, is on a basis of 6 per cent. on less than $14,000 per mile. The fact that the Baltimore and Ohio Railroad Company is a large and powerful system in other States, would not seem to affect the question before us, at least from the standpoint of the legal limitations of the rate-making power of Virginia.

These statements are not regarded by the commission as fairly representing the earnings of these roads, but, even when properly analyzed, are not such as to justify further reduction at present.

The commission is further of opinion that a maximum passenger rate of three cents per mile should be observed as to intra-state passengers by the Norfolk and Southern Railway Company, and the Virginia and Carolina Coast Railroad Company, now operated by said Norfolk and Southern Railway Company. The net income of the Norfolk and Southern Railway Company from all sources for year ending June 30, 1906, as shown by its operating report on file in this office, is $805.85 per mile, which is on a basis of 6 per cent. on a valuation of about $13,000 per mile. The net income of the Virginia and Carolina Coast Railroad for the same year is very
180 much less. Under these conditions the commission does not feel warranted in reducing the maximum rate on these two roads below three cents per mile. These roads also appear in general schedule "B."

The commission is further of opinion that a maximum passenger rate of three cents per mile should be observed as to intra-state passengers on all roads embraced in general schedule "B," and that a maximum passenger rate of three and one-half cents per mile should be observed as to intra-state passengers on all independent narrow-gauge steam roads, and on all independent broad-gauge roads less than ten miles in length. These roads appear in general schedule "C."

General Schedule Showing Rates of Passenger Fares for the Several Steam Roads Operating in Virginia, as Ordered by the State Corporation Commission.

SCHEDULE A.—(2 CENTS PER MILE.)

Norfolk and Western Railway Company,
Chesapeake and Ohio Railway Company,
Atlantic Coast Line Railroad Company,
Seaboard Air Line Railway,
Southern Railway Company,
Richmond, Fredericksburg and Potomac Railroad Company,
Washington-Southern Railway Company,
New York, Philadelphia and Norfolk Railroad Company,
Virginia and Southwestern Railway Company,
Louisville and Nashville Railroad Company.

Except that a maximum rate of two and one-half cents per mile will apply on the following divisions or branches of the Southern Railway Company:

Norfolk Division, extending from Pinner's Point to Dan-
181 ville, 204 miles, exclusive of so much of the said division as may be in the State of North Carolina.

Franklin Branch, extending from Franklin Junction to Rocky Mount, 37 miles.

Claremont Branch, extending from James River Junction to Claremont, 50 miles.

SCHEDULE B.—(3 CENTS PER MILE.)

Chesapeake-Western Railway.
Cumberland Valley and Martinsburg Railroad Company,
Danville and Western Railway Company,
Indian Creek and Pound River Railroad Company,
Marion and Rye Valley Railway Company,
Nelson and Albemarle Railway Company,
Valley Railroad Company of Virginia,
Virginia-Carolina Railway Company,
Virginia Southern Railroad Company,
Winchester and Potomac Railroad Company,
Winchester and Strasburg Railroad Company,
Norfolk and Southern Railway Company.

SCHEDULE C.—(3 1-2 CENTS PER MILE.)

Big Sandy and Cumberland Railroad Company,
Big Stone Gap and Powell's Valley Railway Company,
Black Mountain Railway Company,
Interstate Railroad Company,
Lick Creek and Lake Erie Railroad Company,
Mt. Airy and Eastern Railway Company,
New River, Holston and Western Railroad Company,
Potomac, Fredericksburg and Piedmont Railroad Company,
Surry, Sussex and Southampton Railway Company,
Tidewater and Western Railroad Company,
Virginia Anthracite Coal and Railway Company,
Virginia and Kentucky Railway Company,
Wise Terminal Company.

182 It has been urged by the carriers that the prices of material and labor have greatly increased during the period of this investigation, and are continuing to increase since the evidence in the case was taken. Examination shows, however, that, in practically all cases, the gross earnings of the roads are also increasing, and that the most that can be said as to this claim, when properly analyzed, is that the profits on increased gross earnings are being absorbed by increased charges for labor and material, though the commission is not prepared to find that even this is wholly true. In the case of some of the roads, such for instance as the Southern, it is found that they are failing to accept and carry much of the intra-state Virginia traffic originating on their lines, or tendered to them by connecting lines, and which is now making urgent demand upon them for transportation. This failure to transport traffic tendered, and naturally tributary to them, is not found to exist on those roads which are conducting the largest amount of business, but on the roads which are handling along their tracks, a volume of traffic below the average. It would appear from the evidence that if many of the roads which complain of lack of revenue would utilize fully, as they should, the improved facilities now owned by them, both of power and equipment, in the transportation of traffic already offered to them, the profit arising from increased business would soon take care of any increase in the cost of material and labor.

The State of Virginia and the whole South is throbbing with energy and enterprise, and teeming with traffic as never before. The field of opportunity for railroad companies has widened and continues to widen beyond the most sanguine expectations of their official heads, and admittedly far beyond their present state of preparedness. We have shown that the net profit arising from the handling of this greatly increased and increasing traffic, even under the reduction herein ordered, will be equal to, if not greater than that enjoyed by other standard and legitimate business in the country. It is inconceivable that the carriers should, under these conditions,

183 find themselves unable to command the financial credit necessary to the performance of their public duties, and to the provision of such increased facilities in the nature of track,

terminals and equipment, as may be necessary to keep pace with the expansion of traffic, of which they are to become the beneficiaries.

VIRGINIA, *City of Richmond, To-wit:*

We, R. R. Prentis and R. T. Wilson, Chairman, and Clerk, respectively, of the State Corporation Commission of Virginia, do hereby certify that the foregoing is a full, complete and true copy of the written opinion of the said Commission which is referred to in the last order contained in the foregoing transcript of record, and which opinion, by said order, is made a part of the record of the proceeding in which said order was entered.

In testimony whereof, we have hereunto set our hands, and affixed the seal of the said State Corporation Commission, this the 25th day of June, 1907.

[Seal of the State Corporation Commission of Virginia.]

ROBERT R. PRENTIS,
Chairman.
R. T. WILSON, *Clerk.*

This day R. T. Wilson, Clerk of the State Corporation Commission of Virginia, to me personally known, appeared in person before me, the undersigned, a Notary Public in and for the City of
184 Richmond, in the State of Virginia, and, before me, in my said city, subscribed and made oath to the foregoing certificate.

In testimony whereof I have hereunto set my hand and affixed my official seal this, the 25th day of June, 1907.

[NOTARIAL SEAL.] JNO. S. EGGLESTON,
Notary Public.

185 *Affidavit of Robert McM. Gillespie, President of the Chesapeake Western Railway, on Behalf of Complainant.*

Filed June 29th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

CHESAPEAKE WESTERN RAILWAY, Complainant,
versus
BEVERLEY T. CRUMP and Others, Defendants.

STATE OF NORTH CAROLINA, *County of Buncombe, To-wit:*

Robert McM. Gillespie, being duly sworn says, I have been President of the Chesapeake Western Railway since 1903 and am also General Manager. The annexed statements are copies of those annexed to an affidavit of this deponent, dated March 19th, 1907, which were submitted to the Corporation Commission during the proceedings before it as to the passenger rate; and are true to the best of my knowledge, information and belief.

The net profits after payment of operating expenses and taxes for the year ending in June 1904, were somewhat less than $1500. It will be noticed from the annexed statements that the profits the next year were somewhat less than $15,000., and in 1906 about $20,500 The road is run as economically as possible with due regard to the safety of the public. Expenses cannot be further reduced, in fact the cost of operation will be increased during the coming year, as
186 an increase of salaries and wages to almost every employee, of nearly 10%, was of necessity and right made by us to take effect July 1st, 1907. The cost of living, and wages and salaries along the lines, have so increased lately as to require this increase to be made by us.

The roadbed, especially that of the older part of the line, required $7,800. in 1906 as against $3500 the year before and at the present time this amount will be greater, for the condition of the tract has required within the last four months, our starting a new section gang with foreman. The equipment being old required $6,700 in 1906 as against $4,700 the year before, and this year it will require a greater expenditure as one of our four locomotives has been practically rebuilt and two others substantially overhauled. General expenses were about the same in 1906 as during the year before, but this item will be increased on account of the 10% raise aforesaid.

The gross earnings were $70,350.06 for the year ending June 30th, 1906, and the net only $20,508.14. No salary was or is paid to president, vice-president, secretary or treasurer, and no interest was paid on the $1,419,000. of outstanding 4% mortgage bonds; the coupons amount to $56,760 a year. Therefore there really was a deficit of about $36,000.

The bonds were issued in 1901, at the rate of $35,000 a mile; which really does not represent the cost of value today of the road; for there are now some $300,000 of unpaid coupons; in fact for some time when the railroad was really not paying operating expenses, many of the expenses were charged to, and paid by another company, for the then management wished the road to appear to at least carry itself.

The road is entirely, except for some switches, built of 80
187 lb. rails, it has switches at every station and many between stations; and has sufficiently good station accommodations; there are two large iron bridges, one across the Shenandoah River and one across the North River; and it has sufficient equipment to take care of its local business, for its interline business, both interstate and intra-state it relies upon getting cars from its connecting lines, the B. & O. Ry. and the N. & W. Ry.; and in all ways it has proper facilities to care for the public along its lines.

At present prices, for labor and material I do not think the road could be duplicated for $40,000 a mile, because it is substantially built, having been intended as a part of a trans Virginia route from the Ohio River to Chesapeake Bay.

66.38% of the gross earnings are from intra-sfate business, and the net earnings from intra-state business taken as 66.38% of the whole net earnings for the year 1906 amounted to $13,613.30.

Of the entire intra-state business the passenger business represents 53.33%, consequently the question of passenger earnings which give us more than one half of our entire intra-state business are of vital importance to us and any reduction in rates would make a most serious reduction in our net annual revenues; in fact a reduction of the passenger earnings would tend to practically ruin the road and would tend to reduce its net earnings to such a figure that the company might be unable to pay even operating expenses and taxes.

The Company now charges 3½¢ for a straight ticket between stations and cannot afford to have that rate reduced; in fact the rate should be increased to 4¢ a mile which would not be an un-
188 reasonable rate from the point of view of the railroad or of the public. The gross intra-state passenger earnings were $24,892.91 and if the rate was reduced by a ½¢ a mile I estimate that the loss to us would be $3,012. a year.

The road runs from Elkton, a station on the Norfolk & Western, where it shares expenses of station facilities with that road, from there it crosses the Shenandoah River and passing through three considerable towns continues West to Harrisonburg a town which claims 5,000 inhabitants; there it crosses the tracks of the B. & O. about a mile South of where the B. & O. and Southern railroad join; thence still in Rockingham County it runs West through the towns of Dayton, Bridgewater etc., to North River Gap close to the West Virginia line where it ends in the forests of the Shenandoah mountains. From Harrisonburg West it crosses no railroad and has no railroad connections of any kind for just West of it are the high Shenandoah mountains, with the B. & O. railroad miles off at Staunton.

The road being but 41 miles long, makes practically no profit upon its entirely local freight business on account of the fact that the shipper is given two full days to load, requiring also about a day to place the car, and because the consignee is also given two full days to unload, with a day lost in taking out the empty car; this means that about six days are wasted on each shipment, and a car being worth 50¢ a day, as represented by the 50¢ per diem charges universally recognized as being a sufficiently low figure, there is $3.00 really off the freight charges earned. Even when the car goes to a point on another line we have the free time expense which amounts to $1.50 being the per diem charge for three days; we are at a similar disadvantage when a car comes from a foreign point to a
189 station on our line. The aforesaid facts are given as showing the disadvantage which a small road is at in connection with its freight business, and the reasons why a small road should always be allowed higher rates; the same disadvantage exists as to its passenger business. It is seldom that the passengers on a road, unless it is a link between two main railways lines, carries all or any substantial number of its passengers the whole length of its line; the Chesapeake Western Railway on account of its so to speak geographical position, carries its passengers an average distance of 14.8 miles. This computation is arrived at by including the passengers who

travel on Sunday and other excursions, when the price is less than 1¢ a mile; on this excursion business the road makes about 1/12 of its gross passenger earnings, consequently I estimate *that* leaving out excursions, the average passenger travel not to exceed 10 miles, a quarter the length of the road. That is the reason why during the year ending in 1906 we carried less than one half the average passengers per train mile that the B. & O. did and one third as many as the Southern did and about one quarter as many as the N. & W. did; as a result of this our passenger earnings per mile are correspondingly small. A reason for this short haul is that Harrisonburg is located in exactly the centre of our line and practically all of our business lies between that town and our stations East and West of it; and this fact is aggravated, fortunately or unfortunately, according to the point of view, by the circumstance that Harrisonburg is the only town on the line which is not a temperance town.

The Eastern part of the road lies in Rockingham County and the Western in Augusta, which counties I understand, are the two richest counties, as shown by the assessed values of real and personal
190 property, except Henrico County. Real estate values I understand have increased along the line of the road, since the latter was built owing to the fact that the market of the big cities have thereby been opened to the farmers; these counties are notably in a valuable farming and grazing district; and in the prosperity of these counties caused by the building of the road, the road itself unfortunately to date has not shared. The farmers along the line are so well to-do and prosperous, that their financial condition is the boast of the counties; they ship great quantities of cattle and farm products, realizing a quarter more than they used to by obtaining prices therefor that prevail in Washington and Richmond, much to their benefit and likewise somewhat to the injury of the townspeople who are thereby required to pay higher prices, making their cost of living higher; this has made wages and salaries in the community increase, from which increase the railroad has suffered being required as above to increase its wages and salaries, without getting any corresponding benefit in obtaining freight and passenger rates. Freight and passenger rates have in that locality not increased with the proportionately rising wages and cost of materials. A 4¢ passenger rate would for the near future, until circumstances so change that a higher rate will be fair and reasonable, be a fair rate on the Chesapeake Western Railway through these two counties, for the reason that so few passengers travel, and when they do, they go such a short distance.

All of the above facts and conclusions were fully presented by this deponent to the said Commission in the proceedings at Richmond. This road must for its passenger earnings rely almost entirely upon its purely local passenger business, because less than 2% of its passenger travel beyond the line over the Norfolk &
191 Western; the road has no exchange passenger business with the B. & O. railway for the latter's station at Harrisonburg is about three quarters of a mile North of our track.

It is a fact, which I believe is universally admitted, that the cost

of operating through trains, that is trains carrying passengers a long distance, is much less than that of operating a local train, that is a short distance train; the result is that it costs us far more to carry a passenger 10 miles on our line, than it cost a trunk line to carry a passenger each 10 miles of a long trip. Furthermore, the demands of the community are such that we could not at a profit operate more trains than we do now; at present one crew, starting at our Western terminus in the mountains runs a train to the Eastern terminus and back again twice a day; our freight crew at the Eastern terminus runs a freight train to the Western terminus and back once a day, this train hauls one passenger car. From this it is evident that few trains are operated, and that the opportunity of earning the large revenue is small compared with the opportunity of a trunk line over whose rails many trains run each day and hour.

The value of the property of the Chesapeake Western Railway in Virginia, used in its entire business is more than $1,419,000, but taking it at that value, and calculating, as is proper, that 66.38% of this is used in intra-state business we have the value of its property used in intra-state business as $941,932.

The net earnings from intra-state business, both passenger and freight are $13,613.30, which gives a return of just 1½%, with the present 3½¢ rate; with a reduction of ½¢ the return would be reduced to 1 1/10%; with an increase of ½¢ we would have a return of 1 8/10%, that is with the 4¢ rate.

192 The annexed coupon (except they will be in one piece to be torn apart, are consecutively numbered) is a copy of those ordered to be distributed to agents and conductors.

ROBERT McM. GILLESPIE.

Sworn to before me this 29th day of June 1907.

J. M. LORICK,
Notary Public.

[NOTARIAL SEAL.]

My commission expires the 4th day of May, 1908.

193 *Coupon.*

Chesapeake Western Railway.

Assignable Coupon: Payable only if so decided by U. S. Courts. Dated and signed by Agent or Conductor.

C. A. JEWETT,
Traffic Manager.

[14]*	13	12	11	10	[9]*	8	[7]*	[6]*	5	4	3	2	1
27	26	25	24	23	22	21	20	19	18	17	16	15	14
41	40	39	38	37	36	35	34	33	32	31	30	29	28

Chesapeake Western Railway.

Assignable Coupon: Payable only if so decided by U. S. Courts. Dated and signed by Agent or Conductor.

C. A. JEWETT,
Traffic Manager.

1	2	3	4	5	[6]*	[7]*	8	[9]*	10	11	12	13	
[14]*	15	16	17	18	19	20	21	22	23	24	25	26	27
28	29	30	31	32	33	34	35	36	37	38	39	40	41

194 Chesapeake Western Railway.

Income Account.

JUNE —, 1906.

	For the month June. 1906.	1905.	For the fiscal year to date. 1905–6.	1904–5.
Gross Earnings:				
Passenger	2,438.52	1,847.44	25,076.09	20,068.48
Freight	2,879.32	2,859.08	40,016.92	31,531.90
Mail	216.71	198.25	2,591.84	2,444.10
Express	199.82	139.22	2,513.45	3,686.52
Miscellaneous	19.04	17.97	151.76	310.77
Total Gross Earnings	5,753.41	5,961.96	70,350.06	58,041.77
Operating Expenses:				
Maintenance of Way and Structures	859.50	474.00	7,868.60	3,544.67
Maintenance of Equipment	449.13	550.01	6,723.62	4,712.24
Conducting Transportation	2,395.46	2,040.14	25,978.58	25,432.98
General Expenses	607.20	570.68	6,497.61	6,863.60
Total Operating Expenses	4,311.29	3,634.83	47,068.41	40,553.49
Per cent. of Operating Expenses	74.93	71.81	66.96	69.87
Taxes	298.51	225.00	2,773.51	2,825.00
Total Operating Expenses and Taxes	4,609.80	3,859.83	49,841.92	43,378.49
Per Cent. of Operating Expenses and Taxes	80.12	76.25	70.85	74.74
Net Earnings	1,143.61	1,202.13	20,508.14	14,663.28
Fixed Charges.				

July 31st, 1906. C. B. WILLIAMSON, *Auditor.*

* Figures enclosed in brackets erased in copy.

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Operating Expenses, June, 1906.

	For the month of June.		For the fiscal year to date.	
Maintenance of Way and Structures:	1906.	1905.	1905–6.	1904–5.
1. Repairs of Roadway	333.95	261.22	4,368.64	1,911.59
2. Renewals of Rails	.....	.....	136.23	
3. Renewals of Ties	312.62	134.70	1,700.02	301.92
4. Repairs and Renewals of Bridges and Culverts	193.55	48.00	1,212.54	937.53
5. Repairs and Renewals of Fences, Road Crossings, Signs, and Cattle Guards	.....	10.08	109.14	88.61
6. Repairs and Renewals of Buildings and Fixtures	5.58	5.73	172.22	81.23
8. Repairs and Renewals of Telegraph	13.80	14.27	166.81	173.60
9. Stationery and Printing	.....	.....	3.00	17.00
10. Other Expenses	.....	.....	.....	33.19
Total	859.50	474.00	7,868.60	3,544.67
Maintenance of Equipment:				
11. Superintendence				
12. Repairs and Renewals of Locomotives	292.67	330.48	4,055.55	2,832.01
13. Repairs and Renewals of Passenger Cars	44.63	142.65	1,295.80	767.71
14. Repairs and Renewals of Freight Cars	89.93	69.38	1,072.39	1,039.22
15. Repairs and Renewals of Work Cars	.....	.....	.....	1.10
17. Repairs and Renewals of Shop Machinery and Tools	21.90	7.50	294.88	55.20
18. Stationery and Printing	.....	.....	5.00	17.00
19. Other Expenses				
Total	449.13	550.01	6,723.62	4,712.24

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Operating Expenses—Continued.

	For the month of June.		For the fiscal year to date.	
	1906.	1905.	1905–6.	1904–5.
Conducting Transportation:				
20. Superintendence	114.10	100.00	1,214.10	1,150.95
21. Engine and Roundhouse Men	320.16	328.80	3,889.72	3,743.06
22. Fuel for Locomotives	908.43	692.30	8,533.81	7,997.40
23. Water Supply for Locomotives	22.51	7.76	369.09	389.96
24. Oil, Tallow, and Waste for Locomotives	17.08	.....	237.35	211.57
25. Other Supplies for Locomotives	.....	.....	6.00	
26. Train Service	277.27	272.23	3,253.89	3,116.83
27. Train Supplies and Expenses	45.54	13.56	468.63	225.51
28. Switchmen, Flagmen, and Watchmen	.....	.....	24.85	57.38
29. Telegraph Expenses	83.82	71.07	887.03	832.47
30. Station Service	293.00	299.24	3,454.48	3,475.65
31. Station Supplies	4.50	11.44	140.51	128.10
32. Switching Charges—Balance				
33. Car Mileage—Balance	182.20	66.73	1,812.20	422.46
34. Hire of Equipment				
35. Loss and Damage	50.60	38.47	367.45	359.59
36. Injury to Persons	.....	.....	.....	2,011.10
37. Cleaning Wrecks	.....	.....	31.75	1.47
39. Advertising	2.25	54.50	137.40	187.08
40. Outside Agencies				
41. Commissions				
42. Stock Yards and Elevators	.....	.....	3.30	
43. Rents for Tracks, Yards, and Terminals	30.00	30.00	350.95	307.50
44. Rents of Buildings and Other Property	19.83	20.84	245.00	268.83

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45. Stationery and Printing	14.17	33.20	521.07	545.82
46. Other Expenses	10.00	.....	30.00	.25
Total	2,395.46	2,040.14	25,978.58	25,432.98
General Expenses:				
47. Salaries of General Officers	335.00	320.00	3,855.00	3,840.00
48. Salaries of Clerks and Attendants	135.79	95.00	1,210.79	1,098.75
49. General Office Expenses and Supplies	31.82	59.00	379.01	322.30
50. Insurance	38.34	38.34	468.83	532.08
51. Law Expenses	4.40	.....	19.13	465.64
52. Stationery and Printing (General Offices)	26.35	56.20	179.90	227.14
53. Other Expenses	35.50	2.14	384.95	377.69
Total	607.20	570.68	6,497.61	6,863.60
Total Operating Expenses	4,311.29	3,634.83	47,068.41	40,553.49
Per Cent. of Operating Expenses to Gross Earnings	74.93	71.81	66.96	69.87

196 *Decree Directing Coupons to Issue to Purchasers of Tickets, &c., and Continuing Restraining Order Awarded June 1st, 1907.*

Entered and Filed June 29th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

CHESAPEAKE WESTERN RAILWAY, Complainant,
versus
BEVERLEY T. CRUMP and Others, Defendants.

This cause coming on this day to be heard upon the Bill of Complain*ant* heretofore filed on the first day of June, 1907, and upon the Restraining Order granted in pursuance of the prayer of said Bill, which said Restraining Order was issued on the date of the filing of the said Bill *of* directed the Defendants therein to show cause on the 27th day of June, 1907, why an injunction *pendente lite* should not be granted, pending further proceedings in this cause:

And it appearing to the Court that, under the order of the State Corporation Commission of Virginia, issued on the 27th day of June, 1907, it is provided that a three cent maximum rate for passenger fares on the railroad of the Complainant is by the terms of said order to become effective on the first day of July, 1907, and the Court, by reason of the necessity for its consideration of the matters of litigation pending has not been able to further consider at this time, the prayer of said Bill for an injunction *pend-*

197 *ente lite*, as prayed for by the Complainant: and

The Complainant having this day filed in this cause the affidavits of C. A. Jewett, Traffic Manager, of C. D. Williamson, Auditor and of Robert McM. Gillespie, President and General Manager, of said Company, whereby it appears that assignable coupons, have been ordered delivered to the station agents and conductors of the Complainant, made in duplicate one to be delivered to a purchaser of a ticket, and one to be kept by the Complainant, whereby it can be ascertained, at any time, what is the excess fares paid by said purchaser, over and above the three cent rate ordered by said Commission; and whereby said purchaser or his assignee *made* recover from the Register of this Court said excess paid, that is the excess fare paid over and above the fare as ordered, in the event it shall be finally held in this proceeding that said order of the State Corporation Commission of Virginia, was and is a valid and binding order upon this Complainant.

Now, therefore, to the end that the rights of no one shall be put in jeopardy pending this litigation, but that proper arrangements shall be made and order *as* entered whereby the legal status of all parties *effected* by this litigation shall be preserved:

It is adjudged, ordered and decreed, that the Complainant shall

give to any person purchasing a ticket at any of its stations, or on its trains, at the time and place of purchase, a transferable coupon representing the sum to which such person, or his transferee, shall be entitled to upon decision upholding the constitutionality
198 of the Order of the Commissioners dated April 27th, 1907, referred to in said Bill, that being the excess paid by such passengers over three cents per mile.

2. And this Court having read the affidavit of Robert McM. Gillespie, dated the 29th of June, 1907, and having inspected the form of said assignable coupon, does hereby approve of the form thereof as being in substantial compliance, when used, with the Order set forth in the foregoing paragraph; and

3. It is further Adjudged, Ordered and Decreed, that in the event that it shall be necessary in the usual course of business of said Railway Company, to issue any other form of coupons, said coupons so issued shall contain substantially the provisions set forth in the forms of coupons annexed to the affidavit of said Gillespie above referred to; and

4. It is further Adjudged, Ordered and Decreed that, if, for any reason, it shall be impossible for said Complainant to strictly comply with the terms of this Order in furnishing coupons as herein provided for all of its stations and conductors by July 1st, 1907, then the furnishing and putting of the same in use at as early a date as may be practicable shall be deemed a substantial compliance with this Order; and

6. It is further adjudged, ordered and decreed, that the Complainant shall keep duplicates of all the original coupons issued to passengers; that the Complainant shall, from time to time, report to the Court as ordered by the Court, and shall give such bond as the Court may require; and that on the final determination to the effect that this Complainant shall be entitled to the said
199 excess fares, the said bond or bonds shall be released or cancelled; that upon said determination, in favor of the Complainant, or in favor of the holders of said coupons, all said excess fares shall be retained by the Complainant, or paid to the said holders of the coupons, as the case may be, by orders of the said Court.

7. It is further adjudged, ordered and decreed, that, the Restraining Order heretofore granted in this cause on the first day of June, 1907, is continued until the further order of this Court.

J. C. PRITCHARD,
U. S. Circuit Judge.

June 29th, 1907.

200 *Special and Limited Appearance for Defendants.*

Filed July Rules, Monday, July 1st, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

CHESAPEAKE WESTERN RAILWAY, Complainant,
versus
BEVERLEY T. CRUMP, HENRY C. STUART, and JOSEPH E. WILLARD, Individually and as Constituting the State Corporation Commission of Virginia, and R. T. WILSON, Clerk of the State Corporation Commission of Virginia, Defendants.

Special and Limited Appearance at Rules for Defendants on the First Monday in the Month of July, 1907.

We, the undersigned attorneys-at-law, hereby appear for, and on behalf of, the defendants in the above named cause, for the purpose of objecting to the jurisdiction of this court to entertain the said cause, or to make any order therein, against the said defendants, or any of them, and for that purpose alone, this appearance is limited, and is made specially and solely for the purpose of objecting to the jurisdiction of the Court, in said cause, and for no other purpose whatsoever.

WILLIAM A. ANDERSON,
A. CAPERTON BRAXTON,
Solicitors and Counsel for said Defendants.

201 *Affidavit of C. A. Jewett, Traffic Manager of Chesapeake Western Railway, on Behalf of Complainant.*

Filed July 1st, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

CHESAPEAKE WESTERN RAILWAY, Complainant,
versus
BEVERLEY T. CRUMP and Others, Defendants.

STATE OF VIRGINIA, *County of Rockingham, To-wit:*

C. A. Jewett, being duly sworn, says:

I was, during the year expiring June 30th, 1906, General Freight and Passenger Agent of the Chesapeake Western Railway, and am now Traffic Manager thereof; our straight rate for passenger transportation between points on our line is three and one-half cents per mile, this rate is not sufficiently high to be reasonable with regard

both to the railroad and to the passengers, whether considered in respect to the value of the property used in the service, or in respect to the value of the services rendered; an increase to four cents would not result in a decrease of the gross intrastate passenger earnings; a four cent rate would be just and reasonable as above set forth; a reduction to a three cent rate would be unjust and unreasonable and would deprive the Complainant of an opportunity to earn fair
202 and reasonable profit in its business in respect to the value of its property, and to the value of its services rendered; a decrease to three cents would not materially increase the gross intrastate passenger business or earnings; with a four cent rate, the excess passenger rates over three cents a mile, collected, would not exceed $4,000.00 a year or be likely to exceed $400.00 in any one month.

C. A. JEWETT.

Sworn to before me this 22nd day of June, 1907.

[NOTARIAL SEAL.] C. H. CHANDLER,
Notary Public.

My Commission expires Sept. 27th, 1908.

Affidavit of C. B. Williamson, Auditor of the Chesapeake Western Railway, on Behalf of Complainant.

Filed July 1st, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

CHESAPEAKE WESTERN RAILWAY, Complainant,
versus
BEVERLEY T. CRUMP and Others, Defendants.

STATE OF VIRGINIA, *County of Rockingham, To-wit:*

203 C. B. Williamson, being duly sworn, says:

I was during the year expiring June 30th, 1906, and now am, Auditor of the Chesapeake Western Railway; on account of my position above, I am conversant with the amount of freight and passenger, interstate and intrastate traffic of said railroad during the above period; for the purpose of being exact, I have had my assistants, S. D. Bloxton and J. E. Byrd, personally examine the necessary records in this office and at the stations, and from their reports and from my personal information, I know that the figures given in Paragraph 7 of the Bill herein, are correct, and that the mathematical calculations therein made are correct; from my personal knowledge and also from discussions with my above two assistants, and also with William H. Hall, Treasurer, I know and estimate that our gross earnings from mail and express business added together, are derived half from interstate and half from intrastate business.

The four per cent. railway bonds amount to $1,419,000.00, and the coupons are unpaid as stated in said Paragraph 7; and no salaries

are paid to the officers as therein stated; the percentage of operating expenses and taxes to gross earnings on intrastate business was 70.85. The road could not have been operated more economically.

C. B. WILLIAMSON.

Sworn to before me this 22nd day of June, 1907.

[NOTARIAL SEAL.] C. H. CHANDLER,
Notary Public.

My Commission expires Sept. 27th, 1908.

204 *Agreement of Counsel.*

Filed July 1st, 1907.

In Equity.

CHESAPEAKE WESTERN RAILWAY, Complainant,
versus
BEVERLEY T. CRUMP and Others, Defendants.

It is agreed that, if the court should hold that it has jurisdiction of this cause, then it need not go into the question of the merits upon the hearing of this rule, but may thereupon grant the preliminary injunction referred to in the rule and refer the cause to a Master; provided that the sole purpose and effect of this stipulation is and shall be that the granting of such preliminary injunction and the referring of the cause to a Master without further affidavits or testimony on the merits on the part of the Complainants shall not be assigned or treated as error; all other rights and remedies whatsoever of the defendants shall remain unaffected, and particularly shall they not be considered as or regarded as having made any concession upon the question of the jurisdiction of this court or the conclusiveness as a matter of law of the action or order of the Virginia State Corporation Commission in the premises, all questions on the merits being reserved for a hearing before the Master and before the Court on final hearing—the concession made herein by the defendants as to the granting of the interlocutory injunction is not to be used against them on any question of fact, or legal presumption as to fact, either before the Master or before the Court on the final hearing on the merits.

205 *Memorandum of the Court.*

Filed July 10th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

CHESAPEAKE WESTERN RAILWAY, Complainant,
versus
BEVERLEY T. CRUMP and Others, Defendants.

I fully appreciate the fact that the questions involved in this controversy are serious in their character and require the closest scrutiny in order that a proper conclusion may be reached in determining the same.

It is always a source of regret to me to be called upon to determine the validity of an Act of a legislative or other body representing a sovereign State, and in this instance, it is especially so, entertaining as I do, the profoundest respect for the State of Virginia and her institutions. This is also true of North Carolina, where I have been recently called upon to decide questions similar to those involved in this proceeding, and applies with equal force to any of the States of the Union. However, I am called upon to *preform* a solemn duty and the obligation which rests upon me to determine the questions involved in this cause in accordance with the provisions of the Constitution of the United States is imperative. It is not my purpose to attribute any unworthy motives to those who framed the provisions of the constitution authorizing the creation of the Corpo-
206 ration Commission of Virginia. I am satisfied that those who were instrumental in securing the adoption of such provision were honestly endeavoring to devise some means by which there could be a proper ascertainment of rates to be charged by railroads and other public corporations, yet in determining the questions presented for my consideration it becomes my duty to ascertain, if possible, the effect of the constitutional provisions in question. The courts cannot consider motives nor public policy in dealing with questions of this character, but must be *guide* solely in construing the same by the limitations imposed by the constitution of the United States. The power and duty of the courts of the United States to afford to individuals protection for their constitutional rights in respect to property even as against persons claiming under authority of the United States itself have repeatedly been recognized by the Supreme Court of the United States. A notable case being the one where the descendants of General Robert E. Lee instituted suit against officers of the United States for the possession of Arlington and the Circuit Court of the United States for the Eastern District of Virginia afforded relief to the constitutional rights of these descendants of General Lee for the possession of that property, and this decision of the Circuit Court was affirmed by the Supreme Court of the United States in the case of the United States *vs.* Lee 106 U. S.

196. The decision of the Circuit Court in this case is reported under the title of the Arlington case, 3rd Hughes 36.

The complainant in this cause seeks to enjoin the enforcement of certain passenger rates recently adopted by the State Corporation Commission of the State of Virginia. It insists that its present rates in the State of Virginia are not higher than a reasonable compensation for the services rendered by it to travellers on its lines, and are in no sense excessive or exorbitant; that they are not unjustly, unduly unreasonable or illegally discriminatory between individuals, nor as between localities and that they in no way violate the law. It also insists that it has as an incident of its property, and as a property right, the right to charge for each service it renders a reasonable compensation, and that it is protected by the Fourteenth Amendment to the Constitution of the United States in making, receiving and collecting such charge. It is also insisted that the effect of the proposed rates would be to materially diminish its charges and reduce the same greatly below what would be reasonable and just compensation for the respective services rendered to the patrons of its lines. It is contended that to prevent it from charging a reasonable compensation for the services rendered to the travelling public would be to deprive it of its property without just compensation and without due process of law.

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It is likewise insisted by the complainant that if the order of the State Corporation Commission of Virginia prescribing and fixing rates should be permitted to go into effect it would subject it to the danger of a multitude of suits based on such order and to prosecutions for penalties in enormous amounts.

Among other things complainant prays for an injunction against Beverley T. Crump, Henry C. Stuart, Joseph E. Willard, individually, and as constituting the State Corporation Commission of Virginia, and R. T. Wilson, Clerk of the State Corporation Commission during the pendency of this suit.

On June 1, 1907, an order was entered restraining the defendants from enforcing the provisions of the aforesaid Act, and at the same time, notice was issued to the defendants to appear before me on the 27th day of June 1907, and show cause why the injunction should not be continued until the final hearing.

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The defendants file an answer in which they say that the rates fixed by the State Corporation Commission are not confiscatory. However, when the motion came on for hearing counsel representing complainant and defendants signed an agreed statement of facts, as to that part of the bill which charges that the rates are confiscatory. The part of the agreement which is essential to the determination of the questions now before the court, reads as follows:

"It is agreed that, if the court should hold that it has jurisdiction of this cause, then it need not go into the question of the merits upon the hearing of this rule but may thereupon grant the preliminary injunction referred to in the rule and refer the cause to a master. * *"

In view of the foregoing agreement the only question left for consideration is whether this court has jurisdiction of the questions involved.

It is insisted by counsel for the defendants that the State Corporation Commission of Virginia is a court within the meaning and intent of the provision of Section 720 of the Revised Statutes of the United States, which reads as follows:

"The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injuction may be authorized by any law relating to proceedings in bankruptcy."

I have heard with much pleasure the unusually able and interesting arguments of counsel representing complainant and defendants, and have given the questions presented much consideration, and in this connection, will say that, I have never had presented to me a question which has caused me greater concern than the one involved in this hearing.

Section 720 of the Revised Statutes is plain and explicit and cannot be misinterpreted, but I am forced to the conclusion that it does not apply in this instance.

It is true that the Court of Appeals of Virginia has held
209 that the Corporation Commission of Virginia possesses judicial, executive and legislative functions. Nevertheless I am of opinion that in fixing the rates involved in this controversy the Corporation Commission was exercising a legislative function, and therefore was not acting as a court within the meaning of Sec. 720 of the Revised Statutes, and its acts in attempting to put in force the rates thus established are administrative. Under these circumstances, this court has jurisdiction to restrain the defendants from publishing and enforcing the rates which have heretofore been prescribed and established by said Commission. The acts sought to be restrained being purely ministerial in their character, the complainant seeks to assert a right which is guaranteed by the Constitution of the United States and it thereby becomes the duty of the court to entertain jurisdiction in order that the reasonableness of such rates may be judicially determined.

It is not necessary, at this time, to pass upon the validity of the provision of the Constitution of Virginia which created the State Corporation Commission; that is a question which the court reserves until the final hearing of this cause.

For the reasons herein stated the restraining order heretofore granted will be continued until the final hearing.

In conclusion, I will say that it is a source of gratification to me to know that my decision in respect to this question is not final, but that it is to be ultimately submitted to the Supreme Court of the United States for determination, and if I have committed error that distinguished tribunal will correct the same.

210 I will prepare an opinion at an early date in which I will discuss more fully my views in regard to the matters in controversy.

Decree Granting Interlocutory Injunction.

Entered and filed July 11th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

CHESAPEAKE WESTERN RAILWAY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

Before Honorable J. C. Pritchard, Judge of said Court.

In pursuance of the order to show cause made herein on the 1st day of June, 1907, by which the said defendants were ordered to appear before this Court in the United States Court Room at Asheville, N. C., at Ten o'clock a. m. on Thursday the 27th day of June, 1907, to show cause if any they had or could show why an injunction *pendente lite* as prayed in the bill should not be issued, said defendants appeared by counsel and by consent of defendants through their counsel and of the complainant through its counsel the fourth paragraph of the order herein of June 1st, 1907 was amended so as to require the defendants and each of them to show cause before a Judge of this Court (instead of before this
211 Court) in the United States Court Room at Asheville, North Carolina, on the date mentioned;

And thereupon the defendants filed their answer in writing objecting to the jurisdiction of this Court in the premises and by a like consent Robert R. Prentis was substituted as one of the defendants in this cause in the place of the defendant Beverley T. Crump, said Robert R. Prentis having since the institution of this suit, succeeded the said Beverley T. Crump as a member and as Chairman of the State Corporation Commission of Virginia and it was stipulated at the bar of this court between counsel for the defendants and counsel for the plaintiff as follows:

"It is agreed that, if the court should hold that it has jurisdiction of this cause, then it need not go into the question of the merits upon the hearing of this rule, but may thereupon grant the preliminary injunction referred to in the rule, and refer the cause to a Master; provided that the sole purpose and effect of this stipulation is, and shall be, that the granting of such preliminary injunction, and the referring of the cause to a Master, without further affidavits or testimony on the merits on the part of the Complainant, shall not be assigned or treated as error; all other rights and remedies whatsoever of the defendants shall remain unaffected, and particularly shall they not be considered as, or regarded as, having made any concession upon the question of the jurisdiction of this court or the conclusiveness as a matter of law of the action or order of the Virginia State Corporation Commission in the premises, all questions on the merits being reserved for a hearing before the Master and be-

fore the Court on final hearing—the concession made herein by the defendants as to the granting of the interlocutory injunction is not to be used against them on any question of fact, or legal presumption as to the fact, either before the Master or before the Court on the final hearing on the merits."

And thereupon the motion of the Complainant for an interlocutory injunction, as prayed in the bill, coming on to be heard before the judge of this court, and the said motion having been heard upon the bill of complaint in this cause, treated as an affidavit, upon the answer thereto of the defendants objecting to the jurisdiction of the court, upon said stipulation of counsel, and upon the affidavits filed herein by the complainant, and the said motion having
212 been argued by counsel, and having been fully considered, it is now ordered:

1. That, until the further order of the Court herein, the defendants Robert R. Prentis, Henry C. Stuart, and Joseph E. Willard, individually and as constituting the State Corporation Commission of Virginia, and each and all of their successors in office, their and each of their servants, agents and employees, be, and they hereby are, restrained and enjoined from publishing, or having published, in any newspaper published in the City of Richmond, Virginia, the general order of the State Corporation Commission of Virginia, bearing date the 27th day of April, 1907, in respect to passenger rates, in the bill in this cause mentioned, and from taking any other step or steps whatsoever under the Constitution or laws of Virginia, or otherwise, to enforce the requirements of said order.

2. That, until the further order of the Court herein, the defendant, Richard T. Wilson, Clerk of the State Corporation Commission of Virginia, his successors in office, and his servants, agents and employees, be, and they hereby are, restrained and enjoined from publishing, or having published, the said order of the State Corporation Commission of Virginia in any newspaper published in the City of Richmond.

That until the further order of the Court herein that the defendant the Times-Dispatch Company or any Agent of such Times-Dispatch Company or any other newspaper and the owner, proprietor or manager and the agent of any such owner, proprietor, or manager of any such other newspaper published in the City of Richmond and they and each and every one of them are enjoined and restrained from publishing or having published under the direction of the State Corporation Commission of Virginia or of the Clerk thereof said order of said State Corporation Commission of Virginia entered on the 27th day of April, 1907.

213 That until the further order of the Court herein, the owners, proprietors, or managers of any newspaper published in the city of Richmond, Virginia, be, and each and every one of them is, hereby restrained and enjoined from publishing, or having published, under the direction of the State Corporation Commission of Virginia or the Clerk thereof, such order of the State Corporation Commission of Virginia.

That said Complainant, or some one for it, shall, before a judge

of this Court, or the Clerk thereof, execute a bond in the penalty of Ten Thousand Dollars, with surety to be approved by such Judge, or by such Clerk, conditioned to pay into the registry of this court, from time to time, when and as the Court may so order, such sum or sums of money as shall be equal to the difference between the aggregate passenger rates charged and received by it for intrastate service on its lines in the State of Virginia, and what would have been the aggregate amount for such service, at the rates fixed in said order of the State Corporation Commission of Virginia of April 27th, 1907, and further conditioned, that, whereas an interlocutory injunction has been issued in this cause, by the terms of which the defendants, and each of them, are restrained until the further order of this Court, as from said order will appear, should the said interlocutory injunction be dissolved or vacated as having been wrongfully issued, or because the said acts were improperly restrained, then that the complainant should pay, or cause to be paid, all damages caused by the issue of such interlocutory injunction, and the costs in this cause in connection therewith.

That the complainant shall give to any person who travels between points on its lines in the State of Virginia at a rate exceeding three cents per mile coupons substantially in the form as hereinbefore provided, and that the said coupon shall be of such
214 form and number as that from it, in connection with the ticket or other evidence of transportaion to which it corresponds, may be ascertained the sum to which such person shall be entitled in the event that the order entered by the State Corporation Commission of Virginia on the 27th day of April, 1907, is in this cause finally upheld as a valid and binding order.

That the complanant herein shall preserve and produce, whenever so ordered by the Court, all cancelled tickets or other evidence of transportation in respect to which coupons as provided for in the order herein June 29, 1907, may be outstanding, and shall, from time to time, as required by order of the court so to do, report to the Court statements showing the revenue by it charged and collected for the intrastate transportation of passengers in the State of Virginia, in excess of the amount permitted by said order of the State Corporation Commission of Virginia of April 27th, 1907, and the complainant shall, from time to time, give such further bond or bonds as the Court may require, to secure proper payment into the the registry of the Court of all the amounts which finally shall be adjudged that it should so pay under the final decision in this cause.

That if it shall be determined herein that the complainant is entitled to the amounts covered by said bond or bonds then said bond or bonds shall be released and canceled by the court and if any amount shall then have been paid into the registry of the court pursuant to the orders of this court, that then upon such determination in favor of the complainant the sum or sums so paid into the registry shall be paid to the complainant without further order of the court herein.

That the restraining order heretofore entered in this cause shall

be continued and remain in full force and effect until this
215 interlocutory injunction shall take effect.

It is further ordered that a writ of injunction shall forthwith issue in accordance with this order.

July 11th, 1907.

J. C. PRITCHARD,
U. S. Circuit Judge.

216 *Injunction Bond.*

Filed July 17th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

CHESAPEAKE WESTERN RAILWAY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

Know all men by these presents, the Chesapeake Western Railway, a corporation of the State of Virginia, the principal office of which is in the City of Richmond, in said State, and Robert McM. Gillespie as principals and the United States Fidelity and Guaranty Company, as surety are held and firmly bound unto the United States of America, in the just and full sum of Ten Thousand Dollars, for the payment of which well and truly to be made, we do hereby jointly and severally bind ourselves and each of our successors, firmly by these presents.

Sealed with our seals and dated this 12th day of July in the year 1907.

The condition of the above obligation is such that if the said Chesapeake Western Railway, shall pay into the Registry of the Circuit Court of the United States for the Eastern District of Virginia, upon the order of said Court, in the above mentioned cause, such sums as the Court may ascertain to be due to persons entitled to receive the difference between the amount paid by them for their intrastate travel in Virginia and the amount they would
217 have to pay under the order of the State Corporation Commission of Virginia entered on the 27th day of April, 1907, and if the said Chesapeake Western Railway shall pay or cause to be paid all damages caused by the issue of the interlocutory injunction issued therein, and the costs of this cause in connection therewith, then this obligation to be void, otherwise, to be and remain in full force and effect.

In testimony whereof the parties hereto have caused these presents to be duly signed in their respective names, and their respective

seals to be hereunto affixed, duly attested this 12th day of July in the year 1907.

[Seal of Chesapeake Western Railway.]

CHESAPEAKE WESTERN RAILWAY,
By ROBERT McM. GILLESPIE.

Attest:
W. H. HALL, *Secretary.*
Witness to R. McM. G.:
W. H. HALL.

ROBERT McM. GILLESPIE. [SEAL.]

[Seal of The United States Fidelity and Guaranty Company.]

THE UNITED STATES FIDELITY
AND GUARANTY COMPANY,
By E. LESLIE SPENCE, JR., *Ag't,*
Attorney in Fact.

The foregoing bond is hereby approved this 16th day of July, A. D. 1907.

J. C. PRITCHARD,
United States Circuit Judge.

218 *Interlocutory Injunction.*

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

CHESAPEAKE WESTERN RAILWAY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

The President of the United States of America to Robert R. Prentis, Henry C. Stuart, Joseph E. Willard, Richard T. Wilson, and the Times-Dispatch Company, and to all other individuals and corporations, their and each of their attorneys, agents and employees, Greeting:

The Honorable Judge of the Circuit Court of the United States for the Eastern District of Virginia, having on the 11th day of July, 1907, after due notice and hearing, ordered that an injunction issue as herein stated, to-wit:

1. That under the further order of the Court herein the defendants, Robert R. Prentis, Henry C. Stuart, and Joseph E. Willard, individually and as constituting the State Corporation Commission of
219 Virginia and each and all of their successors in office, their and each of their servants, agents and employees be and they hereby are restrained and enjoined from publishing or having published in any newspaper published in the City of Richmond, Virginia, the general order of the State Corporation Commission of Virginia, bearing date the 27th day of April, 1907, in respect to pas-

senger rates in the bill in this cause mentioned and from taking any other step or steps whatsoever under the Constitution or laws of Virginia or otherwise to enforce the requirements of said order.

2. That until the further order of the Court herein, the defendant Richard T. Wilson, Clerk of the State Corporation Commission of Virginia, his successors in office and his servants, agents and employees be and they hereby are restrained and enjoined from publishing or having published said order of the State Corporation Commission of Virginia in any newspaper published in the City of Richmond.

3. That until the further order of the Court herein that the defendant the Times-Dispatch Company or any Agent of such Times-Dispatch Company or any other newspaper and the owner, proprietor or manager and the Agent of any such owner, proprietor or manager of any such other newspaper published in the City of Richmond and they and each and every one of them are enjoined and restrained from publishing or having published under the direction of the State Corporation Commission of Virginia or of the Clerk thereof said order of said State Corporation Commission of Virginia entered on the 27th day of April, 1907.

4. That until the further order of the Court herein the owners, proprietors or managers of any newspaper published in the City of Richmond, Virginia, be and each and every one of them is hereby
220 restrained and enjoined from publishing or having published under the direction of the State Corporation Commission of Virginia or the Clerk thereof such order of the State Corporation Commission of Virginia.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at the City of Richmond, in the State of Virginia, this 12th day of July, A. D., 1907.

[Seal of United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Marshal's Return.

Executed July 13th, 1907, by delivering in person, at the office of the State Corporation Commission of Virginia at Richmond, Va., to Henry C. Stuart, Joseph E. Willard and R. T. Wilson each a true copy of the within order. Further executed July 15th, 1907, by delivering in person at the office of the State Corporation Commission of Virginia in Richmond, Va., to Robert R. Prentis a true copy of the within order. Further executed July 15th, 1907, by delivering in person, at the office of the Richmond Times-Dispatch in Richmond, Va., to J. St. George Bryan a true copy of the within order, the said J. St. George Bryan being the Secretary and Treasurer of the

Richmond Times-Dispatch Company, the President of said Company not being found.

MORGAN TREAT,
United States Marshal.

221 *Demurrer of Robert R. Prentis to Bill of Complaint.*

Filed August Rules, Monday, August 5th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

CHESAPEAKE WESTERN RAILWAY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

The demurrer of Robert R. Prentis, one of the defendants to the above styled suit, to the bill of complaint of the above named complainant.

This defendant, by protestation not confessing or acknowledging all or any of the matters and things in the said plaintiff's bill to be true in such manner and form as the same are therein set forth and alleged, demurs thereto, and for cause of demurrer shows:

First. That the said plaintiff has not, in and by the said bill, made or stated any such cause as doth or ought to entitle it to any such relief as is thereby sought and prayed for;

222 *Second.* That this defendant has no personal or individual interest in the matters and things referred to in said bill;

Third. That the said plaintiff has an adequate remedy at law;

Fourth. That the matters and things complained of in said bill are *res adjudicata;*

Fifth. That this court has no jurisdiction to hear and determine this cause, for the reason that this is a suit against the State of Virginia;

Sixth. That this court has no jurisdiction to hear and determine this cause, for the reason that the State Corporation Commission is a "court" of the State of Virginia, and this court is therefore without power to enjoin the said Commission;

Seventh. That this court has no jurisdiction to hear and determine this cause, for the reason that, if said Commission is not such a "court" as this court is without power to enjoin, then the publication of said Commission's order of April 27th, 1907, was a necessary part of the enactment of the same as legislation, and this court is equally without power to enjoin legislation before it is enacted.

Wherefore, and for divers other good causes of demurrer appearing in said bill, this defendant demurs thereto, and humbly demands

the judgment of this court whether he shall be compelled to
223 make any further answer to the said bill; and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

WILLIAM A. ANDERSON,
A. CAPERTON BRAXTON,
JNO. W. DANIEL,
Counsel for said Defendants.

We hereby certify that, in our opinion, the foregoing demurrer is well founded in point of law.

WILLIAM A. ANDERSON,
A. CAPERTON BRAXTON,
JNO. W. DANIEL,
Counsel for said Defendants.

STATE OF VIRGINIA, *City of Richmond, To-wit :*

Robert R. Prentis, being first duly sworn, deposes and says, that he is the defendant named in the foregoing demurrer; that said demurrer is not interposed for delay, and that the same is true in point of fact.

ROBERT R. PRENTIS.

Subscribed and sworn to before me this 3rd day of August, 1907.
JNO. S. EGGLESTON,
Notary Public for the City of Richmond, in the State of Virginia.

224 *Joint and Separate Plea of H. C. Stuart, Joseph E. Willard, and R. T. Wilson to Bill of Complaint.*

Filed August Rules, Monday, August 5th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

CHESAPEAKE WESTERN RAILWAY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

The joint and separate plea of H. C. Stuart, Joseph E. Willard, and R. T. Wilson, three of the defendants to the above styled suit, to the bill of complaint of the above named complainant.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in said plaintiff's bill to be true in such manner and form as the same are therein set forth and alleged, for plea to the whole of said bill, say that they have no personal, private, or individual connection with the subject matter of

this suit, but are only interested therein, or connected therewith in so far as the said Stuart and Willard are two of the three members of the State Corporation Commission of Virginia and said Wilson is Clerk thereof; that the said State Corporation Commission was created and established, and its functions, powers, duties, and
225 procedure prescribed and provided for, by the Constitution and statutes of said State (of which this court will take judicial notice) as will fully appear from "Defendants' Exhibit A," "Defendants' Exhibit B," "Defendants' Exhibit No. 1," and "Defendants' Exhibit No. 2," all of which said exhibits are filed with, and made a part of the Answer of the defendants herein to the Rule heretofore awarded in this cause, requiring said defendants to appear before the Honorable Jeter C. Pritchard, one of the Judges of this Court, at the City of Asheville, in the State of North Carolina, on the 27th day of June, 1907, and show cause why an injunction *pendente lite* should not issue, as prayed for in said bill of complaint, and which said exhibits are hereby referred to, and made a part of this plea as fully as if the same were herein set forth *in extenso*, and are prayed to be taken and read as a part of this plea; that the said constitutional and statutory provisions are still in full force and effect, and have been in full force and effect continuously since prior to the 1st day of January, 1904, and they represent the entire constitutional and statutory provisions of said State upon the subject of this plea or relating to the subject-matter of this suit, in effect at any time since the 1st day of January, 1904; that, on the 6th day of October, 1903, certain Rules of Order, Practice and Procedure before the said State Corporation Commission were duly made and prescribed by said Commission and entered upon the records of its proceedings, and also printed and distributed, all of which was authorized by the aforesaid statutes, and was in accordance with the authority and provisions of said statutes; which said Rules of Order, Practice and Procedure are filed as "Defendants' Exhibit
226 No. 3" with, and made a part of, the aforesaid Answer of the defendants herein to the aforesaid Rule to show cause why an injunction *pendente lite* should not be awarded in this suit, as prayed for in said bill of complaint, and which said Exhibit is hereby referred to, and made a part of this plea as fully as if the same was herein set forth *in extenso*, and is prayed to be taken and read as a part of this plea; that the proceedings before the said State Corporation Commission, which are referred to in said bill of complaint, and in which the said Commission, on the 27th day of April, 1907, entered its order in respect to the passenger rates of the plaintiff, complained of in said bill of complaint, were taken and had before the said Commission in strict conformity, in every respect, with the provisions, hereinbefore referred to, of the Constitution and statutes of the said State, and of the said Rules of Order, Practice and Procedure, all of which will more fully and at large appear from sections *"Fifth"* and *"Eighth"* of the aforesaid Answer of the defendants herein to the aforesaid Rule to show cause why an injunction *pendente lite* should not be awarded in this suit, as prayed for in said bill of complaint, and from "Defendants' Exhibit No. 4" and

"Defendants' Exhibit No. 5," which said Exhibits are filed with and made a part of the said Answer of the defendants herein to the aforesaid Rule, and which said Exhibits, and sections *"Fifth"* and *"Eighth"* of the said Answer to said Rule, (except insofar as said sections present any defense other than the sole defense interposed by and relied upon in this plea, viz: that this suit cannot be entertained by this court because of the inhibition of Sec. 720 of the Revised Statutes of the United States, hereinafter more particularly referred to,) are hereby referred to, and made
227 a part of this plea as fully as if the same were herein set forth *in extenso*, and are prayed to be taken and read as a part of this Plea; that the Commonwealth of Virginia was a formal plaintiff in the aforesaid proceedings before said Commission, referred to in said bill of complaint, and was required to be such, by the aforesaid laws of said State; that, under said laws, the said Commonwealth, as well as any defendant in said proceedings, may, as a matter of right, now appeal from said order of said Commission, of April 27th, 1907, to the Supreme Court of Appeals of Virginia; that, for the reasons next hereinafter pointed out, this honorable court is without power to enjoin the said Supreme Court of Appeals from hearing and deciding any such appeal, should the same be taken; that, by a certain Act of the Congress of the United States, which is printed and published as Section 720 of the Revised Statutes of the United States, it is provided that, "a writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except where such injunction may be authorized by any law relating to proceedings in bankruptcy"; that no injunction is, or ever has been, authorized to be granted in this suit "by any law relating to proceedings in bankruptcy"; that, as will appear from the aforesaid constitutional and statutory provisions of the said State, and also from the decisions and opinions of the Supreme Court of Appeals of said State, which is the highest court of, and the court of last resort in, the said State, of which said opinions and decisions, as well as of which said constitutional and statutory provisions, this court will take judicial notice, the
228 said State Corporation Commission of Virginia is a "court" of the said State, within the true meaning, purport, intent, and purview of the aforesaid Act of Congress, and was acting as such "court" continuously from the inception of the aforesaid proceedings before it, referred to in said bill of complaint, up to and including the entry of its aforesaid order of April 27th, 1907, relating to the passenger rates of the plaintiff, and was also so acting in publishing said order, in accordance with the aforesaid laws of the said State, and was also so acting at the time this suit was instituted, and at the time the restraining order was granted in this suit, and will and must so act in any and all steps which it may hereafter take in respect to matters and things referred to in said bill of complaint; and these defendants say that this honorable court is without power to grant any of the relief prayed for in the said bill of complaint, or to entertain this suit, because no relief can be granted the plaintiff herein without enjoining said State Corporation

Commission, which this court is forbidden to do by the aforesaid Act of Congress; all of which matters and things these defendants aver to be true, and they plead the same to the whole of the said plaintiff's bill, as aforesaid, and pray the judgment of this honorable court whether they ought to be required to make any other or further answer to the said bill, and pray to be hence dismissed, with their costs and charges in that behalf most wrongfully sustained.

JNO. W. DANIEL,
WILLIAM A. ANDERSON,
A. C. BRAXTON,
Counsel for said Defendants.

229 We hereby certify that, in our opinion, the foregoing plea is well founded in point of law.

JNO. W. DANIEL,
WILLIAM A. ANDERSON,
A. C. BRAXTON,
Counsel for Defendants.

STATE OF VIRGINIA, *City of Richmond, To-wit:*

H. C. Stuart, being duly sworn, deposes and says that he is one of the defendants named in the foregoing plea, and that the said plea is true in point of fact, and is not interposed for delay.

H. C. STUART.

Subscribed and sworn to before me, this 5th day of August, 1907.

JNO. S. EGGLESTON,
Notary Public for the City of Richmond, in the State of Virginia.

230 *Setting Down Demurrer of R. R. Prentis to be Argued.*

Filed September Rules, Monday, September 2nd, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

CHESAPEAKE WESTERN RAILWAY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

Now comes the Complainant, the Chesapeake Western Railway, by its Counsel in the above entitled case and moves the Court to set the demurrer filed by Robert R. Prentis, one of the defendants herein for argument.

S. S. P. PATTESON,
Counsel for Complainant.

231 *Setting Down Joint and Separate Plea of Henry C. Stuart, Joseph E. Willard and R. T. Wilson to be Argued.*

Filed September Rules, Monday, September 2nd, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

CHESAPEAKE WESTERN RAILWAY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

Now comes the Complainant, the Chesapeake Western Railway, by its counsel in the above entitled case and moves the court to set the plea filed by Henry C. Stuart, Joseph E. Willard and R. T. Wilcon, defendants herein, for argument, on the ground that the said plea does not furnish any sufficient defense to the bill of complaint herein filed.

S. S. P. PATTESON,
Counsel for Complainant.

232 *Order Filing Plea of Res Adjudicata.*

Entered and Filed September 10th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

CHESAPEAKE WESTERN RAILWAY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

The Defendants by Counsel tendered to the Court a plea of *res adjudicata* to the Complainant's bill in this cause, and moved the Court to grant them leave to file said plea, whereupon it is ordered that said leave be given and the plea is accordingly filed.

And it is further ordered that leave be, and the same is hereby granted to the Complainant in this cause to set down the said plea to be argued, or take issue on said plea on or before the first day of the October Term 1907 of this Court.

J. C. PRITCHARD,
United States Circuit Judge.

September 10th, 1907.

233 *Plea of Res Adjudicata.*

Filed September 10th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

CHESAPEAKE WESTERN RAILWAY, Complainant.

versus

ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump), H. C. STUART and JOSEPH E. WILLARD, Individually and as Constituting the State Corporation Commission of Virginia, and R. T. WILSON, Clerk of said Commission, Defendants.

The Joint and Several Plea of the Above Named Defendants to the Bill of Complaint of the Above Named Complainant.

These defendants respectively by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's said bill to be true in such manner and form as the same are therein set forth and alleged, for farther plea to the whole of said bill, say as follows:

That at a lawful session of the Virginia State Corporation Commission held on the 27th day of April, 1907, in the rooms of said Commission in the State Capitol in the City of Richmond, Virginia, said Commission entered up the final order and judgment and made its final findings in the case then pending before said Commission known as The Virginia Passenger Rate Case, in which case the Commonwealth of Virginia was the plaintiff, and the said complainant here, and others were the defendants, which order and judgment and findings of said Commission were made pursuant to a certain notice to the complainant here, and the other steam railway companies operating lines of steam railway in the State of
234 Virginia, the defendants in said Passenger Rate Case, which notice, proceedings, and findings are set forth *in extenso* in Defendants' Exhibit No. 5, exhibited as a part of the Answer of these defendants, to the Rule heretofore awarded in this cause requiring these defendants and each of them to show cause before this Court or the Judge thereof in the United States Court Room at Asheville, North Carolina, at 10 o'clock on the 27th day of June, 1907, why an injunction *pendente lite* as prayed for in the said Bill should not be issued, to which exhibit now a part of the record in this cause, special reference is here made.

And these defendants aver that the said the State Corporation Commission of the State of Virginia which entered said order and judgment, and made said findings as set forth in said Exhibit No. 5, filed as part of said Answer, was at and before the said 27th of April, 1907, and has continued from said last mentioned date to be, and still is, and continues to be, a tribunal validly created and constituted under the Constitution and laws of said Commonwealth, and thereby duly invested and clothed with exclusive original juris-

diction and power in the matter of regulating and prescribing the charges which shall be made by the complainant and all other companies or corporations owning or operating railways in said State, for the transportation of passengers between points wholly within the territorial limits of Virginia, upon the lines of railway so owned or operated by any such company; and said Commission was, and is, and continues to be, at the date of, before, and since the said 27th of April, 1907, fully empowered by said Constitution and laws to control and regulate all such companies in respect to their duties to the public within the Commonwealth of Virginia, under and by virtue of the statutes, and sections of the Constitution of Virginia

heretofore filed as part of the said Answer to said Rule as
235 Defendants' Exhibit No. 1, Defendants' Exhibit No. 2, and already made a part of the record in this cause.

And these defendants say further that the said State Corporation Commission, as it was required by law that it should do, accorded to the complainant here, one of the defendants in said Passenger Rate Case, a full and complete hearing, all proper judicial process, and all due process of law, and every opportunity to make every defense, and to assert every right which said complainant might desire, or be advised to assert in said case against the proposed reduction of the rates and fares theretofore charged by the complainant for the transportation of passengers on its lines within the State of Virginia.

And these defendants further say that the complainant here was duly made a party defendant in and to said Passenger Rate Case, appeared before said tribunal therein upon the hearing and trial thereof by counsel, filed its Answer therein, introduced all of the testimony which it desired, or was advised to be necessary or proper for making its defense therein, both of witnesses heard and examined orally before said Commission, and of documentary and other written testimony filed before said Commission as part of the case of the said defendant, who is now the complainant here.

And these defendants further say that said tribunal (then consisting of Beverley T. Crump, said H. C. Stuart, and Joseph E. Willard), as it was its duty to do, proceeded and acted in all respects judicially in the hearing of said case, and in all of the proceedings had in connection therewith, and judicially investigated and considered all the questions and matters passed upon by said Commission in said case, or which were pertinent to the questions and matters presented therein, and in making its findings, and entering its

order, and judgments aforesaid, as will appear from the
236 Exhibits filed as part of their aforesaid Answer to said Rule.

And these defendants further say that the same identical matters, and every matter, and every question which is presented or raised by the Bill of Complaint here, and every ground of complaint or of defense against the proposed action of said Commission, which the complainant seeks to assert here against the justness and reasonableness or the legality of the rates adjudicated, fixed, and prescribed in said case by said State tribunal for the transportation of passengers by the complainant upon its lines in Virginia, was

presented, involved, raised, heard, tried, and passed upon, adjudicated, and finally decided by said State Corporation Commission of Virginia in due and legal manner and form in said Virginia Passenger Rate Case, in which the said Commonwealth was the plaintiff, and the complainant here was a defendant, and that said State Corporation Commission thereupon rendered and entered up its aforesaid final decision, order, and judgment upon the merits, upon the very same identical matters now sued upon in this cause.

Wherefore these defendants now here specially plead and rely upon said former judgment, in bar to the said plaintiff's present Bill, and humbly demand the judgment of this Honorable Court whether they shall be required to make any further defense thereto, and respectfully pray to be hence dismissed with their costs and charges in this behalf sustained.

WILLIAM A. ANDERSON,
JNO. W. DANIEL,
A. CAPERTON BRAXTON,
Of Counsel for Defendants.

237 I hereby certify that in my opinion the foregoing plea is well founded in law.

WILLIAM A. ANDERSON,
Of Counsel for Defendants.

STATE OF VIRGINIA, *City of Richmond, To-wit:*

R. T. Wilson, being duly sworn deposes and says that he is one of the above named defendants, and that the foregoing plea is true in point of fact, and is not interposed for delay.

R. T. WILSON.

Subscribed and sworn to before me in my City aforesaid this the 10th day of September, 1903.

T. GRAY HADDON,
Notary Public in and for Richmond City.

238 *Setting Down Plea of Res Adjudicata to be Argued.*

Filed October Rules, Monday, October 7th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

CHESAPEAKE WESTERN RAILWAY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump), and Others, Defendants.

Now comes the complainant, Chesapeake Western Railway Company, by its counsel, in the above entitled cause, and sets down the joint and several plea of *res adjudicata* of the above named defend-

ants herein to be argued, on the ground that the said plea does not furnish any sufficient defense to the bill of complaint herein filed.

S. S. P. PATTESON,
Counsel for Complainant.

239 *Final Decree.*

Entered and Filed December 26th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

CHESAPEAKE WESTERN RAILWAY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverly T. Crump), and Others, Defendants.

This cause came on this 26th day of Dec., 1907, to be heard upon the Bill of Complaint, with the exhibits therewith filed, and upon the papers formerly filed herein, including the special and limited appearance of the defendants at Rules, and their joint and separate answer to the Rule herein, returnable on June 27th, 1907, and upon the proceedings and orders heretofore had and entered herein, and upon the demurrer of Robert R. Prentis (substituted defendant for Beverley T. Crump), which has been duly set down to be argued, and upon the joint and separate plea of Henry C. Stuart, Joseph E. Willard, and R. T. Wilson, three of the defendants in the above suit, filed in this cause on the 5th day of August, 1907, which said plea has also been duly set down to be argued, and upon the joint and several plea of *res adjudicata* filed by leave of court on the 10th day of September, 1907, in this cause by Robert R. Prentis (substituted defendant for Beverley T. Crump),
240 Henry C. Stuart, and Joseph E. Willard, individually and as constituting the State Corporation Commission of Virginia, and R. T. Wilson, Clerk of said Commission, which said plea of *res adjudicata* has also been duly set down to be argued;

And this cause having been fully argued by counsel, and the court being of the opinion that the demurrer of said defendant Robert R. Prentis is not well founded in law, it is now adjudged, ordered and decreed that the said demurrer be, and the same is, hereby over-ruled;

And the court, being further of the opinion that the joint and separate plea of the said Henry C. Stuart, Joseph E. Willard and R. T. Wilson, set down to be argued as aforesaid, is also not sufficient in law, the court doth now further adjudge, order and decree that the said plea be, and the same is, hereby over-ruled as not being good in law;

And the court, being further of the opinion that the joint and several plea of *res adjudicata* of Robert R. Prentis (substituted defendant for Beverley T. Crump), Henry C. Stuart, and Joseph E. Willard, individually and as constituting the State Corporation Com-

mission of Virginia, and R. T. Wilson, Clerk of said Commission, set down to be argued as aforesaid, is also not sufficient in law, the court doth now further adjudge, order and decree that the said plea of *res adjudicata* be, and the same is, hereby over-ruled as being not good in law;

And the said Robert R. Prentis, standing upon his demurrer, and the said Henry C. Stuart, Joseph E. Willard, and R. T. Wilson, standing upon the said joint and separate plea filed in this cause on the 5th day of August, 1907, and the said Robert R.
241 Prentis (substituted defendant in the place of Beverley T. Crump), Henry C. Stuart, and Joseph E. Willard, individually and as constituting the State Corporation Commission of Virginia, and R. T. Wilson, Clerk of said State Corporation Commission, standing upon said plea of *res adjudicata* filed in this cause on the 10th day of September, 1907, and upon the joint and separate Answer of the defendants to said Rule returnable on June 27th, 1907, and not answering further, it is now upon consideration thereof finally adjudged, ordered and decreed that the bill of Complaint in this cause be and the same is hereby taken for confessed;

It is therefore accordingly adjudged, ordered and decreed by the court that the injunction heretofore granted in this cause against said defendants be made perpetual and

1. That the defendants Robert R. Prentis, Henry C. Stuart, and Joseph E. Willard, individually and as constituting the State Corporation Commission of Virginia, and each and all of their successors in office, their servants, agents, and employees, and each of them, be and they are hereby perpetually enjoined from publishing or having published in any newspaper published in the city of Richmond or elsewhere in Virginia, the general order of said Commission, bearing date April 27, 1907, in respect to and reducing passenger rates in the bill in this cause mentioned, and from taking any other step or steps whatsoever under the Constitution or laws of Virginia heretofore or hereafter enacted, or otherwise, to publish, make effective, or enforce the requirements or any requirement of said order, the enforcement of which in any manner or by any means, is perpetually enjoined in so far as the complainant,
242 Chesapeake Western Railway, or its line of railroad in Virginia, is concerned or affected by said order.

2. That the defendant, Richard T. Wilson, Clerk of said Commission, his successors in office, his servants, agents, and employees and each of them be and they are hereby perpetually enjoined from publishing or having published said order of said Commission in any newspaper published in the City of Richmond, or elsewhere in Virginia so far as said order concerns or affects the complainant or its line of railroad in Virginia.

3. That the owners, proprietors or managers of any and all newspapers published in the City of Richmond, or elsewhere in Virginia, be and they are, each and every one of them, hereby perpetually enjoined from publishing or having published under the direction of the State Corporation Commission of Virginia, or the

Clerk thereof, or any one acting for or on behalf of said Commission, the said order of April 27, 1907, with respect to and reducing passenger rates, so far as the same concerns or affects the complainant or its line of railroad in Virginia.

4. That the bonds heretofore given by the complainant in this cause be, and the same hereby are, released and canceled, and the Complainant and the sureties thereon are hereby released and discharged from any and all liability in respect thereto.

5. That a writ of injunction issue out of this Court, and under the seal thereof, directed to the said defendants, commanding, enjoining and restraining them, as hereinbefore set forth, which injunction shall be perpetual, save as hereinafter provided.

213 But it is further adjudged, ordered and decreed that the defendants, members of, and the clerk to, the said Corporation Commission of Virginia, respectively, as set forth in these proceedings, may hereafter, in the event that the circumstances and conditions shall have changed so that the rates fixed in the order entered by said Commission on the 27th day of April 1907, shall not, under such changed circumstances and conditions, be in violation of the constitutional rights of the Complainant invoked in the Bill of Complaint in this suit, apply to this court by such proper proceedings as they may be advised for a further order in that behalf;

And it is further adjudged, ordered and decreed that the Complainant recover of the defendants its costs in this behalf expended, to be taxed by the Clerk.

J. C. PRITCHARD,
U. S. Circuit Judge.

December 26th, 1907.

214 *Injunction.*

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

CHESAPEAKE WESTERN RAILWAY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump), HENRY C. STUART, JOSEPH E. WILLARD, and R. T. WILSON, Defendants.

The President of the United States of America to Robert R. Prentis, Henry C. Stuart, Joseph E. Willard, and R. T. Wilson; and to their agents, servants and employees and successors in office, and each and every of them; and to the owners, proprietors and managers of all newspapers published in the City of Richmond, Virginia, and each of them, Greeting:

Whereas the Honorable Judge of the Circuit Court of the United States for the Eastern District of Virginia, has on the 26th day of

December, 1907, made perpetual the interlocutory injunction awarded in the above-styled cause on the 10th day of July, 1907.

Now, therefore:

1. The defendants Robert R. Prentis, Henry C. Stuart, and Joseph E. Willard, individually and as constituting the State Corporation Commission of Virginia, and each and all of their successors in office, their servants, agents, and employees, and each of them, be and they are hereby perpetually enjoined from
245 publishing or having published in any newspaper published in the city of Richmond, or elsewhere in Virginia, the general order of said Commission, bearing date April 27, 1907, in respect to and reducing passenger rates in the bill in this cause mentioned, and from taking any other step or steps whatsoever under the Constitution or laws of Virginia heretofore or hereafter enacted, or otherwise, to publish, make effective, or enforce the requirements or any requirement of said order, the enforcement of which in any manner or by any means, is perpetually enjoined in so far as the complainant, Chesapeake Western Railway, or its line of railroad in Virginia, is concerned or affected by said order.

2. The defendant, Richard T. Wilson, Clerk of said Commission, his successors in office, his servants, agents, and employees and each of them be and they are hereby perpetually enjoined from publishing or having published said order of said Commission in any newspaper published in the City of Richmond, or elsewhere in Virginia so far as said order concerns or affects the complainant or its line of railroad in Virginia.

3. The owners, proprietors or managers of any and all newspapers published in the City of Richmond, or elsewhere in Virginia, be and they are, each and every one of them, hereby perpetually enjoined from publishing or having published under the direction of the State Corporation Commission of Virginia, or the Clerk thereof, or any one acting for or on behalf of said Commission, the said order of April 27, 1907, with respect to and reducing passenger rates, so far as the same concerns or affects the complainant or its line of railroad in Virginia.

246 Hereof fail not under penalty of the law thence ensuing.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at the City of Richmond, Virginia, in said District, this Thirteenth day of January, in the year of our Lord one thousand nine hundred and eight, and of our Independence the 132nd year.

[Seal of United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Marshal's Return.

Executed January 13th, 1908, by delivering in person in the City of Richmond, Va., to Robert R. Prentis, Henry C. Stuart, Joseph E. Willard, R. T. Wilson and to Joseph Bryan, he being the President of the Richmond Times-Dispatch Co., a newspaper published in the City of Richmond, Va., and to Alfred B. Williams, he being the President of the News-Leader, a newspaper published in the City of Richmond, Va., and to A. R. Holderby, Jr., he being the Secretary-Treasurer and likewise a director of the Evening Journal, a newspaper published in the City of Richmond, Va., to each of them a true copy of this injunction order.

MORGAN TREAT,
United States Marshal.

247 *Petition for Appeal.*

Filed December 26th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

CHESAPEAKE WESTERN RAILWAY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump), HENRY C. STUART, JOSEPH E. WILLARD, and R. T. WILSON, Defendants.

To the Honorable J. C. Pritchard, Judge of said Court:

Your petitioners, the above-named defendants, and each of them, individually, and also in the capacity in which they are respectively impleaded in this cause, respectfully represent and complain that, in the record and proceedings had in said cause, and also in the final decree entered in said cause, on the 26th day of December, 1907, by the said court at its present term, manifest error hath happened and been committed, to the great injury and damage of said defendants.

Wherefore, the said defendants, and each of them, individually and also in the capacity in which they are respectively impleaded in said cause, conceiving themselves aggrieved, by said error, as aforesaid, hereby respectfully appeal from said decision and decree to the Supreme Court of the United States; and they pray that this, their said appeal, may be allowed, and that a transcript of the record, papers, and proceedings, upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States; and also that an order be made fixing the amount of
248 security which said defendants shall give and furnish upon such appeal.

Accompanying this petition are the assignments of error required

by the rules of the said last-named court, and said defendants are ready to give and furnish the bond likewise required by said rules.

And your petitioners will ever pray, etc.

Dated December 26th, 1907.

WILLIAM A. ANDERSON,
Richmond, Va.,
A. C. BRAXTON,
Richmond, Va.,
JOHN W. DANIEL,
Lynchburg, Va.,
Attorneys and Solicitors for the said Defendants and Appellants.

249 *Assignment of Errors.*

Filed December 26th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

CHESAPEAKE WESTERN RAILWAY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump), HENRY C. STUART, JOSEPH E. WILLARD, and R. T. WILSON, Defendants.

Come now the said defendants, and each of them individually, and also in the capacity in which they are respectively impleaded in this cause, and file the following assignment of errors along with and accompanying their petition for appeal from the final decree entered by this Honorable Court, at its present term, on the 26th day of December, 1907, in the above-entitled cause, upon which errors they and each of them will rely, upon their said appeal:

First.

That the court erred in assuming, asserting and retaining jurisdiction of said defendants, and of said cause.

Second.

That the court erred in not sustaining the validity of the several constitutional and statutory provisions of the laws of Virginia, creating the State Corporation Commission of Virginia, and prescribing its powers and modes of procedure, which said provisions are set forth in the record of said cause, and which were, by the complain-
250 ant in said cause, "claimed to be in contravention of the Constitution of the United States."

Third.

That the court erred in finding and adjudging that the "law" of the Commonwealth of Virginia, embodied in and created by the

order of the State Corporation Commission of Virginia, dated April 27th, 1907, and set forth in the record of said cause, was, as "claimed to be," by the complainant in said cause, "in contravention of the Constitution of the United States."

Fourth.

That the court erred in overruling the demurrer to the bill in said cause.

Fifth.

That the court erred in overruling the joint and separate plea filed by three of the defendants in said cause on August 5th, 1907.

Sixth.

That, if the court had jurisdiction of said cause, and of said defendants, then it erred in overruling the plea of *Res Adjudicata* filed by the defendants in said cause.

Seventh.

That the court erred in not making, rendering and entering a decree in favor of the said defendants, and against the said complainant.

The foregoing specific assignments of error cover, as it is believed, the requirements of the Rule under which they are filed; but the said defendants, as Appellants, by their counsel, in view of the im-
251 portance of this cause and the wide range of subjects necessarily involved in its proper consideration and determination, will pray the Honorable, the Supreme Court of the United States, for leave to discuss, at the hearing, all the subjects involved in said appeal, and not to confine them to the specific points designated above.

Wherefore, the said defendants, as Appellants, pray that the final decision and decree of the said court in this cause be reversed by the Supreme Court of the United States, and the said Circuit Court of the United States for the Eastern District of Virginia be directed to enter an order, dismissing this cause, at the costs of said complainant.

Dec. 26th, 1907.

WILLIAM A. ANDERSON,
A. C. BRAXTON,
JOHN W. DANIEL,
Attorneys and Solicitors for the said Defendants and Appellants.

252 *Order Allowing Appeal and Fixing Amount of Bond.*

Entered and Filed December 26th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

CHESAPEAKE WESTERN RAILWAY COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

Upon motion of William A. Anderson, A. Caperton Braxton and John W. Daniel, Esquires, counsel for defendants, and on filing petition of Henry C. Stuart, Joseph E. Willard, Robert R. Prentis, and R. T. Wilson, individually and also in the capacity in which they are respectively herein impleaded, for an order allowing an appeal, together with an assignment of errors accompanying the said petition,

It is ordered, on this, the 26th day of December, 1907, that an appeal be, and is hereby in open court allowed to the Supreme Court of the United States from the final order and decree entered herein on the 26th day of December, 1907, at this term of this court, perpetuating the injunction heretofore awarded against said defendants; that the amount of the bond upon said appeal be, and hereby is, fixed at the sum of One Thousand Dollars; and that a certified transcript of the record and proceedings herein be forthwith transmitted to the Supreme Court of the United States.

December 26th, 1907.

J. C. PRITCHARD,
U. S. Circuit Judge.

253 *Appeal Bond.*

Filed January 14th, 1908.

Know all men by these presents, That we, Richard T. Wilson of Richmond, Virginia, as principal, and Virginia Trust Company, as surety, are held and firmly bound unto Chesapeake Western Railway in the full and just sum of One Thousand Dollars to be paid to the said Chesapeake Western Railway, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated the 14th day of January, in the year of our Lord one thousand nine hundred and eight.

Whereas, lately at a Circuit Court of the United States for the Eastern District of Virginia, in a suit depending in said Court, between Chesapeake Western Railway, is Complainant, and Robert R. Prentis, (Substituted Defendant for Beverley T. Crump),

Henry C. Stuart, Joseph E. Willard and Richard T. Wilson are Defendants, a decree was rendered against the said Robert R. Prentis, (Substituted defendant for Beverley T. Crump), Henry C. Stuart, Joseph E. Willard, individually, and as constituting the State Corporation Commission of Virginia, and Richard T. Wilson, Clerk of the said State Corporation Commission of Virginia, and the said Robert R. Prentis, (Substituted defendant for Beverley T. Crump), Henry C. Stuart, Joseph E. Willard, individually, and as constituting the State Corporation Commission of Virginia, and Richard T. Wilson, Clerk of the said State Corporation Commission of Virginia, having obtained an appeal to reverse the decree in the aforesaid suit, and a citation directed to the said Chesapeake Western Railway citing and admonishing it to be and appear at a
254 Supreme Court of the United States, at the city of Washington, on the day in the said citation mentioned:—

Now, the condition of the above obligation is such, That if the said Robert R. Prentis, (Substituted defendant for Beverley T. Crump), Henry C. Stuart, Joseph E. Willard and Richard T. Wilson shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

RICHARD T. WILSON. [SEAL.]
VIRGINIA TRUST CO.,
By L. D. AYLETT, *Sec'ty.*

[Seal of Virginia Trust Co.]

Sealed and delivered in presence of
JOSEPH P. BRADY,
Clerk of the U. S. Circuit Court
for the Eastern District of Virginia.

Approved by—
J. C. PRITCHARD,
United States Circuit Judge.

255 *Citation.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Chesapeake Western Railway, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the city of Washington, on the 10th day of February, A. D. 1908, pursuant to an appeal, duly allowed by the Circuit Court of the United States for the Eastern District of Virginia, and filed in the clerk's office of said Court on the 26th day of December, A. D. 1907; in a cause wherein Robert R. Prentis, (Substituted defendant for Beverley T. Crump), Henry C. Stuart and Joseph E. Willard, individually, and as constituting the State Corporation Commission of Virginia, and R. T. Wilson, Clerk of said State Corporation Commission of Virginia, are ap-

pellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable J. C. Pritchard, Judge of the Circuit Court of the United States for the Eastern District of Virginia, this 14th day of January, in the year of our Lord one thousand nine hundred and eight, and of our Independence the 132nd year.

J. C. PRITCHARD,
United States Circuit Judge.

Service of the within citation is hereby admitted this 15th day of January, 1908.

S. S. P. PATTESON,
Attorney for Appellee.

(Richmond, Virginia.)

256 *Order Transmitting Record.*

And, thereupon, it is ordered by the Court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the Supreme Court of the United States and the same is transmitted accordingly.

Teste:

JOSEPH P. BRADY, *Clerk.*

Certificate of Clerk.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, Joseph P. Brady, Clerk of the Circuit Court of the United States for the Eastern District of Virginia, in the Fourth Judicial Circuit, do certify that the above and foregoing is a full, true and correct transcript of the record and proceedings of said Circuit Court, together with all things thereunto relating, in the therein entitled cause.

In testimony whereof, I hereunto set my hand and affix the seal of said Circuit Court, at the City of Richmond, Virginia, this 3d day of February, A. D. 1908.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Endorsed on cover: File No. 21,011. E. Virginia C. C. U. S. Term No. 272. Robert R. Prentis, Henry C. Stuart, and Joseph E. Willard, individually and as constituting the State corporation commission of Virginia, *et al.*, appellants, *vs.* Chesapeake Western Railway. Filed February 10th, 1908. File No. 21,011.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 273.

ROBERT R. PRENTIS, HENRY C. STUART, AND JOSEPH E. WILLARD, INDIVIDUALLY AND AS CONSTITUTING THE STATE CORPORATION COMMISSION OF VIRGINIA, AND R. T. WILSON, CLERK OF THE STATE CORPORATION COMMISSION OF VIRGINIA, APPELLANTS,

vs.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

FILED FEBRUARY 16, 1906.

(21,012.)

(21,012.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 273.

ROBERT R. PRENTIS, HENRY C. STUART, AND JOSEPH E. WILLARD, INDIVIDUALLY AND AS CONSTITUTING THE STATE CORPORATION COMMISSION OF VIRGINIA, AND R. T. WILSON, CLERK OF THE STATE CORPORATION COMMISSION OF VIRGINIA, APPELLANTS,

vs.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States to Louisville and Nashville Railroad Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the city of Washington, on the 10th day of February, A. D., 1908, pursuant to an appeal, duly allowed by the Circuit Court of the United States for the Eastern District of Virginia, and filed in the clerk's office of said Court on the 26th day of December, A. D., 1907; in a cause wherein Robert R. Prentis, (Substituted defendant for Beverley T. Crump), Henry C. Stuart and Joseph E. Willard, individually, and as constituting the State Corporation Commission of Virginia, and R. T. Wilson, Clerk of said State Corporation Commission of Virginia, are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable J. C. Pritchard, Judge of the Circuit Court of the United States for the Eastern District of Virginia, this 14th day of January, in the year of our Lord one thousand nine hundred and eight, and of our Independence the 132nd year.

J. C. PRITCHARD,
United States Circuit Judge.

Service of the above citation is hereby admitted this 17th day of January, 1908.

HENRY L. STONE,
Attorney for Appellee (Louisville, Kentucky).

b [Endorsed:] No. 580. Circuit Court of the U. S. Eastern District of Virginia. In Equity. Louisville and Nashville Railroad Company, Complainant, *vs.* Robert R. Prentis, (Substituted defendant for Beverley T. Crump), and others, Defendants. Citation. Filed this — day of ——, 190–. —— ——, Clerk.

1 *Transcript of Record.*

UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

At a Circuit Court of the United States for the Eastern District of Virginia, begun and held at the Court Rooms in the Custom House, in the City of Richmond, Virginia, on the first Monday in October, being the seventh day of the same month, in the year of our Lord one thousand nine hundred and seven.

Present: The Honorable J. C. Pritchard, Judge of the Circuit Court of the United States for the Eastern District of Virginia.

Among other were the following proceedings, to-wit:

In Equity.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump), HENRY C. STUART and JOSEPH E. WILLARD, Individually and as Constituting the State Corporation Commission of Virginia, and RICHARD T. WILSON, as Clerk of the State Corporation Commission of Virginia, Defendants.

2 *Bill of Complaint.*

Filed May 20th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Complainant,
vs.
BEVERLEY T. CRUMP, H. C. STUART, JOS. E. WILLARD, and R. T. WILSON, Defendants.

To the Honorable Judges of said Court:

The Louisville & Nashville Railroad Company, a corporation created and organized under the laws of Kentucky, and a citizen of the State of Kentucky, having its principal place of business in the City of Louisville, State of Kentucky, brings this bill of complaint against the State Corporation Commission of Virginia, Beverley T. Crump, Chairman thereof, Henry C. Stuart, and Jos. E. Willard, Associate Commissioners, and Richard T. Wilson, Clerk of said Commission, who are all sued individually and as such Chairman and Associate members and Clerk of said Corporation Commission of Virginia, and all of whom are citizens of the State of Virginia, the City of Richmond, in the State of Virginia, being made by law the principal office of said State Corporation Commission.

3 1. The parties to this suit now brought before this Honorable Court, both complain-t and defendants, are citizens of different States, the complainant being a citizen of the State of Kentucky, and all of the defendants being citizens of the State of Virginia; the subject matter of this suit involves questions arising under the Constitution of the United States, and rights asserted by complainant under said Constitution and protected thereby, and the amount involved herein, exclusive of interest and costs largely exceeds the sum or value of two thousand dollars.

2. Complainant states that it is a railroad company created, incorporated and organized under the laws of the State of Kentucky, and is a resident thereof; that it owns and operates railroads as a common carrier of freight and passengers in the States of Kentucky, Tennessee, Louisiana, Mississippi, Alabama, Georgia, Virginia, Florida, North Carolina, Indiana, Illinois, Missouri and Ohio, aggregating a total length of 4306.62 miles.

Complainant states that it constructed and is operating that part of its road in the State of Virginia under and by virtue of authority conferred upon it by an Act of the General Assembly of the State of Virginia, of date March 30, 1887, and which Act is entitled "An Act to authorize the Louisville & Nashville Railroad Company, a corporation created and organized under the laws of Kentucky to construct and operate an extension of its line of railroad into and within the State of Virginia." That pursuant to said authority it extended its line into the State of Virginia, and commenced the operation thereof on or about the first day of June, 1891, and has now in actual operation, and has had since said date, about sixty-six miles of railroad in the State of Virginia, which is a part of what is known as its Cumberland Valley Division."

4 3. Complainant states that from the date of the commencement of the operation of its line of railroad in the State of Virginia to April 1, 1903, it charged a maximum rate of four cents per mile for transportation of passengers to and from points within the State of Virginia on its line of railroad, and also to and from points on its Cumberland Valley Division in the State of Virginia and in the State of Kentucky. It states, however, that on the first day of April, 1903, it voluntarily reduced the passenger rates on its Cumberland Valley Division in the State of Virginia, and also in the State of Kentucky from four cents per mile, to three cents per mile, and that since that date it has charged and collected for the transportation of passengers upon its said Cumberland Valley Division in the State of Virginia, and elsewhere, a maximum sum of three cents per mile, except where passengers paid upon trains to conductors they were charged four cents per mile, and that said charge of three cents per mile, with the exception stated, is the rate it now charges for the transportation of both state and interstate passengers upon its lines in Virginia.

4. Complainant states that there has been established in the State of Virginia, by a provision of the Constitution of that State, a Commission denominated in said Constitution as the "State Corporation Commission." The Constitutional provisions referred to establishing such Commission are contained in certain sections of the Constitution of Virginia, Nos. 155 and 156, which sections are especially referred to as though they were herein fully set out.

This complainant further states that said Constitutional provisions referred to seek to confer upon said Corporation Commission administrative, executive, legislative and judicial powers and functions in respect to the same matter, and, as applied and proposed to be applied to this complainant and to its property in the premises, do

5 not constitute due process of law, nor afford to this complainant the equal protection of the laws, within the meaning of the Fourteenth Amendment to the Constitution of the United States.

This complainant further and additionally pleads and shows that Section five of the Bill of Rights of Virginia, which in the Constitution of that State is declared to be "the basis and foundation of government," provides as follows:

"That the legislative, executive and judicial departments of the

State should be separate and distinct," and the thirty-ninth section of the Constitution of Virginia provides:

"Except as hereinafter provided, the legislative, executive and judiciary departments shall be separate and distinct, so that neither exercise the powers properly belonging to either of the others, nor any person exercise the power of more than one of them at the same time."

The single exception alluded to in Section 39 of said Constitution embraces matters relating to the performance by transportation and transmission companies of their public duties and their charges therefor, in regard to which alone the separation of the legislative, executive and judicial departments is by the Constitution of Virginia denied.

While, therefore, for the protection of every other interest in Virginia, a judicial tribunal is provided by the Constitution and laws of that State, which is not clothed with legislative and executive functions in respect to the matters in which it is required to exercise its judicial functions, and, therefore, by the law of its creation, is capable of judicial consideration and judicial action in respect to them, this, by the constitutional system of Virginia, is denied to transportation and transmission companies in respect to controversies arising about their public duties and their charges therefor.

6 In respect to these, the said State Corporation Commission has been established by the Constitution, which seeks to impose, and, if valid, does impose upon said Commission the duty, or invest it with the power, of instituting proceedings before itself in respect to the public duties of transportation and transmission companies, and their charges therefor, without any other party complainant except the Commission itself, of legislating thereon and making rules and orders in respect thereto, after the proceedings have been thus instituted before it by itself, of enforcing, as a court, compliance with the orders or requirements which it has made in the matters thus brought before it, and thus legislated on or ruled upon, and of adjudging or enforcing against the defendants the fines and penalties prescribed or authorized by the Constitution or by law.

This complainant respectfully submits that said State Corporation Commission, by the law of its creation, is thus, and is otherwise as will appear from the said Constitution, made incapable of the judicial consideration and judicial action in respect to the large interests above mentioned of transportation and transmission companies which due process of law requires; and, in subjecting these large interests to a tribunal thus created, and denying to them the protection of judicial tribunals which are not clothed with legislative and judicial functions in respect to matters in which they are called upon to exercise their judicial function, such as are provided for every other interest in the State by the Constitution and laws of Virginia, the said Constitution not only does not constitute, in respect to transportation and transmission companies, due process of law, but it likewise denies to them the equal protection of the law, contrary to the Fourteenth Amendment to the Constitution of the United States, which provides that no State shall deprive any person of its property without due process of law, nor deny to any

person within its jurisdiction the equal protection of the
7 laws, and is in violation of Section 4 of Article 4 of the Constitution of the United States, which guarantees to each State a republican form of government.

5. This complainant states that its rates and charges for the transportation of persons and property within the State of Virginia are reasonable and just, and have been such as to build up, as far as practicable the business and communities along its line of railroad, and that its railroad in Virginia, as well as elsewhere has been economically and efficiently managed, and that it has attempted in the adjustment of its classification of traffic, and in the adjustment of its rates and charges for persons and property to so adjust them as to develop to the highest practicable extent the business and communities along its line of railroad. It states that, in spite of these facts, its earnings for its intrastate business in the State of Virginia have never been, and are not now, sufficient to give it a fair return of profit upon the value of the property devoted to its intrastate business in the State of Virginia. It states, further, that, not only have its earnings from its state business been insufficient to give it a fair return of profit upon the value of the property devoted to that business, but that such earnings have been insufficient to give it any return at all upon the value of the property devoted to that business, after paying the necessary operating expenses and taxes and interest upon bonds resting upon said property, which have been kept down to the lowest possible amount consistent with good service of the public. It states that any reduction of its rates, fares and charges for the transportation of passengers within the State of Virginia will result in a further and very large reduction of its revenue both state and interstate in the State of Virginia, and will result in a further loss to it than it*s* shown from its present business,
under its present rates, fares and charges, and will deprive it
8 of its property without just compensation, deprive it of the equal protection of the laws, and take its property without due process of law, contrary to the Constitution of the United States, and particularly the Fourteenth Amendment thereof, the benefit and protection of which it respectfully invokes.

It states that nearly if not all the territory of the State of Virginia through which its lines run is sparsely inhabited, and that any reduction of its passenger rates will not increase the travel to any extent, and that it will not be enabled by increase in travel to recoup itself for the loss in its revenue which will inevitably be caused by a reduction in its present passenger rates, fares and charges.

6. It respectfully states that it is entitled to charge and receive for transportation of freight and passengers within the State of Virginia a fair and reasonable rate, and that so long as it charges no more than a fair and reasonable rate for the transportation of freight and passengers within the State of Virginia, neither the State of Virginia nor any governmental authority thereof has the right to reduce its rates and charges or any of them, all of which rates and charges it states are now entirely reasonable and just. It states that its right to charge a fair and reasonable rate for the transporta-

tion of freight and passengers is a property right, and to deprive it of such right by a reduction of its present rates and charges, which are fair and reasonable, both to itself and to the passenger, would be to take its property without due process of law, contrary to the Constitution of the United States, and particularly to the Fourteenth Amendment thereof, the benefit and protection of which it respectfully invokes.

7. Acting under the alleged authority of subsection (*b*) of Section 156 of the Constitution of Virginia, aforesaid, the State Corporation Commission, on the thirty-first day of July, 1906, issued the following notice:

9 "*Notice.*

Office of the State Corporation Commission.

RICHMOND, VA., 31*st Day of July*, 1906.

To the Several Steam Railroad Companies Doing Business in Virginia and all Persons Interested:

Take Notice that the State Corporation Commission will, in the City of Richmond, on Thursday, the first day of November, 1906, at 12 o'clock, noon, in accordance with the authority conferred by the Constitution of Virginia and the statutes enacted by the General Assembly of Virginia pursuant thereto, hear and consider any objections which may be urged against a rule, regulation, order or requirement of the Commission fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers over the line of any railroad company in this State, operated by steam, between points within the State of Virginia, said maximum rate to be observed whether the transportation be entirely over the line of one railroad company, or joint transportation over the lines of two or more companies; and whether the contract for transportation of a passenger or passengers be evidenced by an ordinary ticket between stations, by a mil-age book or otherwise; the Commission to have, as authorized by law, the power and authority from time to time, and as often as circumstances may require, to change or revise the rate, or by rules, regulations and requirements to provide for the more convenient and expedient putting into effect and proper observance of said maximum rate. At the said hearing and consideration of the said maximum rate of two cents per mile, the method, time and extent of promulgation and putting into effect of the same will be heard and determined by the Commission, to the end that a maximum rate for passenger transportation
10 may be put into effect and be made applicable to all steam railroad companies doing business in Virginia, and be properly observed by them in the transportation of passengers.

This notice was published once a week for four consecutive weeks in the Times-Dispatch, a newspaper of general circulation, published in the City of Richmond.

In accordance with said notice, the complainant appeared before the Commission on the first day of November, 1906, and filed an

answer, a copy of which is herewith filed as a part of this bill marked Exhibit A, showing objections against the proposed maximum passenger rate of two cents per mile, and thereafter in due course, introduced evidence before said Commission to show the reasons why the said maximum passenger rate of two cents per mile should not be established. Notwithstanding this, however, and notwithstanding the fact that the evidence before the Commission conclusively showed, as this Complainant is advised, that the said maximum passenger rate of two cents per mile should not, in justice, and could not constitutionally, be established to govern the passenger rates of this complainant in the State of Virginia, and that to attempt to establish the same would amount to confiscation of this complainant's property contrary to the Fourteenth Amendment to the Constitution of the United States, the said Commission on the 27th day of April, 1907, entered the following order:

"COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
vs.
STEAM RAILROAD COMPANIES.

In the Matter of Prescribing a Maximum Passenger Rate.

11 CITY OF RICHMOND, *27th Day of April*, 1907.

The State Corporation Commission having carefully considered all the proceedings herein, and all the testimony, exhibits and statements adduced and filed before it in this proceeding, and having put its conclusions in writing, which are made a part of the record herein, the Commission, in order to carry out its said conclusions, now makes the following order and regulations and prescribes the following maximum rates to be observed by all the steam railroad companies operating in the State of Virginia in the transportation of passengers:

1. It is ordered, that on and after the first day of July, 1907, the following steam railroad companies, viz.,

Norfolk & Western Railway Company,
Chesapeake & Ohio Railway Company,
Atlantic Coast Line Railroad Company,
Seaboard Air Line Railway Company,
Southern Railway Company,
Richmond, Fredericksburg & Potomac Railway Company,
Washington Southern Railway Company,
New York, Philadelphia & Norfolk Railroad Company,
Virginia & Southwestern Railway Company,
Louisville & Nashville Railroad Company,

shall put into effect and observe a maximum rate of two cents per mile in the intrastate transportation of passengers in Virginia, said maximum rate to be observed whether the transportation be entirely over the line of one of the said railroad companies or joint transportation over the lines of two or more companies, and on and

after the said date it shall be unlawful for the said railroad companies, or any of them, to charge or collect a greater sum than two cents per mile for the transportation of passengers over the lines controlled and operated by them respectively, except as otherwise allowed in this order or from time to time by the State Corporation Commission.

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2. It is ordered, that a maximum rate of two and one-half cents per mile for the intrastate transportation of passengers by fixed and prescribed to go into effect on and after the first day of July, 1907, on the following divisions, or branches, of the Southern Railway Company, which are now excepted from the operation of the maximum rate of two cents per mile hereinabove fixed:

Norfolk Division, extending from Pinners Point to Danville, 204 miles, exclusive of so much of the said division as may be in the State of North Carolina;

Franklin Branch, extending from Franklin Junction to Rocky Mount, 37 miles;

Claremont Branch, extending from James River Junction to Claremont, 50 miles.

From and after the said date it shall be unlawful for the Southern Railway Company to charge or collect a greater sum than two and one-half cents per mile for the intrastate transportation of passengers over these divisions, or branches, unless otherwise directed or allowed by the Commission.

3. It is ordered, that on and after the first day of July, 1907, the following steam railroad companies, viz.,

Chesapeake Western Railway,
Cumberland Valley & Martinsburg Railroad Company,
Danville & Western Railway Company,
Indian Creek and Pound River Railroad Company,
Marion & Rye Valley Railway Company,
Nelson & Albemarle Railway Company,
Valley Railroad Company of Virginia,
Virginia, Carolina Railway Company,

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Virginia Southern Railroad Company,
Winchester & Potomac Railroad Company,
Winchester & Strasburg Railroad Company,
Norfolk & Southern Railway Company,

shall put into effect and observe a maximum rate of three cents per mile in the intrastate transportation of passengers in Virginia, and on and after the said date it shall be unlawful for the said railroad companies, or any of them, to charge or collect a greater sum than three cents per mile for the transportation of passengers over the lines controlled and operated by them, respectively, except as otherwise allowed from time to time by the State Corporation Commission.

4. It is ordered, that on and after the first day of July, 1907, the following steam railroad companies, viz.,

Big Sandy & Cumberland Railroad Company,
Black Mountain Railway Company,

Interstate Railroad Company,
Lick Creek & Lake Erie Railroad Company,
Mt. Airy & Eastern Railway Company,
New River, Holtston & Western Railroad Company,
Potomac, Fredericksburg & Piedmont Railroad Company,
Surry, Sussex & Southampton Railroad Company,
Tidewater & Western Railroad Company,
Virginia Anthracite Coal & Railway Company,
Wise Terminal Company,

shall put into effect and observe a maximum rate of three and one-half cents per mile in the intrastate transportation of passengers in Virginia, and on and after the said date it shall be unlawful for the said railroad companeis, or any of them, to charge or collect a greater sum than three and one-half cents per mile for the transportation of passengers over the lines controlled and operated by them respectively, except as otherwise allowed from time to time by the State Corporation Commission.

5. It is further ordered, that in applying the foregoing maximum passenger rates prescribed for the several railroads in Virginia, the railroad companies may charge and collect a minimum rate of ten cents per passenger for any single haul.

6. The payment of fares subject to the maximum rate herein prescribed shall entitle the passenger to the same transportation of baggage as now allowed by the carriers under and in connection with the present rates, and no steam railroad company operating in Virginia shall change or alter the rules governing the rights of passengers with respect to the transportation of baggage in Virginia, without the consent of the Commission first obtained.

7. Steam railroad companies operating in Virginia may charge and collect in addition to regular ticket rates the fixed sum of ten cents from all cash fare passengers who had been afforded reasonable opportunity for purchasing ticket before boarding train; provided that the conductor shall in all such cases deliver to passengers a receipt for the amount collected, redeemable at any ticket office of the company within thirty days from date of issue.

"It is ordered, that the clerk of the Commission do forthwith publish this order in full in one of the newspapers of general circulation published in the City of Richmond, once a week for four successive weeks, as required by law."

Under the constitutional system of Virginia, the said order of the Commission cannot take effect until the same is published once a week for four consecutive weeks in some newspaper of general circulation published in the City of Richmond, and, accordingly, the said Commission, in said order, ordered that the clerk of the Commission do forthwith publish said order, and unless prohibited by the order of this Honorable Court he will at once proceed to do so.

8. This complainant states that the effect of the said order of the State Corporation Commission of Virginia, if enforced, would, as will hereafter appear, be to deprive this complainant of its property without just compensation, and without due process of law, and to

deny it the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States, the benefit and protection of which this complainant respectfully sets up and claims.

The existing passenger rates and charges in effect upon this company's lines in the State of Virginia, and applicable to intrastate business in said State, are not higher than three cents per mile, and are not higher than is just and reasonable, whether considered in respect to the value of the property used by this complainant in the public intrastate service in Virginia, or in respect to the value of the service rendered to travelers upon its lines.

9. This complainant states further that if said order of the State Corporation Commission of Virginia is enforced it would necessarily result in the disturbance and change of its interstate passenger rates, now established and in effect upon its line in the State of Virginia, and would necessarily and directly cause a large reduction in said rates and a large reduction in its revenue derived from the transportation of interstate passengers from points without the State to points within the State, and from within the State to points without the State, and would be, to that extent, a regulation of interstate commerce; and it says that under the Constitution of the United States, particularly Par. 3, Section 8, Art. 1, the Congress of the United States alone has power to regulate commerce between the States, and that it is beyond the power of the State of Virginia, or any governmental agency thereof, to impose
16 upon it rates and charges, which would reduce its interstate passenger rates, and which would, therefore, affect and regulate commerce between the States, and that the same is within the inhibition of th- clause of the Constitution of the United States above referred to, the benefit and protection of which it respectfully invokes.

10. The complainant further shows that there is, in respect to this complainant's property, as in respect to all other classes of property in the State of Virginia, whether owned by individuals or corporations, a difference between the commercial and tax assessment value, the commercial value being, in respect to all classes of property, greater than the value assessed for purposes of taxation, and while this complainant does not admit, but, on the contrary expressly denies that the tax assessment value is as great as the value which should be considered for the purpose of determining its right to make reasonable earnings out of, and reasonable returns on, the property used by it in doing its intrastate business as a common carrier in Virginia, and performing the public service required of it as such, the complainant is advised that the State of Virginia, having made the assessment for the purposes of taxation upon the complainant's property in said State, cannot deny that its property in that State is worth at least the amount of said assessment, and, in fact, its property in Virginia is worth more than the amount of said assessment, and it would cost more to reproduce it. If, however, the earnings which it can make under the proposed passenger rates and charges are estimated only in reference to the said assessed value of

its said property made by the State of Virginia for the purpose of taxation the complainant avers that the proposed rates and charges will not permit it to earn reasonable profits and enjoy reasonable returns, even upon that valuation, and such rates and charges will deprive it of the legitimate use of its property:

17 The ad valorem assessment upon the tangible property of the complainant in the State of Virginia for the year ending June 30, 1906, was.. $1,052,863 00

The franchise tax and registration fee paid the State of Virginia for 1906, capitalized at the same rate of taxation imposed upon its tangible property, to-wit, 35 cents on the hundred dollars..... $1,760,797 00

Thus making a total assessed value in Virginia of.... $2,813,660 00

Complainant states that the actual cost of its road and equipment in Virginia to it as of June 30, 1905, was..... $3,155,668 39

Complainant states further that it has had an estimate made of the cost of reproduction of its lines in Virginia, exclusive of rolling stock, by competent engineers, and that the estimated cost of reproduction of its lines in Virginia at this time in the condition they are now, exclusive of rolling stock and the present fair value thereof, is..... $3,251,272 50

Complainant states that its property in Virginia, including the necessary rolling stock and equipment, used in the conduct of its intrastate business is at present time of the value of at least..... $577,257 00

11. Complainant states that for the year ending June 30, 1905, and which was the year involved in the investigation made by the State Corporation Commission of Virginia of its rates, fares and charges which resulted in the order for the maximum rate of two cents per mile, referred to hereinbefore its earnings and expenses in Virginia, and the return of profit upon the value of the property used in making such earnings were as set forth below. The
18 complainant also shows below the effect upon its earnings, and the profit therefrom for the year 1905, if said two cent maximum rate as proposed in said order had been in force:

Gross earnings in Virginia on all business, state and interstate, freight, passenger and miscellaneous, for the year ending June 30, 1905..... $592,996 67

Operating expenses and taxes (81.08 per cent.)..... 480,790 43

Gross earnings from intrastate freight business in Virginia for the year ending June 30, 1905, were.. 42,714 18

Gross earnings from intrastate passenger business in Virginia for the year ending June 30, 1905, were.. 41,270 35

Total earnings from intrastate freight and passenger business..... 83,894 53

The expenses of doing this business, assuming that State business cost the same as the average of all business, 81.08 per cent. of $83,984.53, equals....		68,094 65
Net earnings		15,889 88
If the passenger rates were reduced to two cents per mile, as proposed in this case, the actual loss in passenger earnings would be.....		11,456 65
This would leave net earnings on intrastate business in Virginia of.....		4,433 23
The cost of road and equipment in Virginia as of June 30, 1905, was.....		3,455,668 39
Assuming that such proportion of the value of the property was used in the conduct of intrastate business as the intrastate earnings are to the total earnings both State and intrastate, the value of		
19 the property used in the conduct of intrastate business would be 14.16 per cent. of the whole, or		416,842 61
On this sum the net earnings of $4,433.23 shown above are equivalent to.....		0.99 per cent.
Gross passenger earnings in Virginia, both State and interstate, for the year ending June 30, 1905....		$100,808 06
Operating expenses and taxes (81.08 per cent.).....		81,735 18
Net passenger earnings.....		19,072 88
The application of pas-enger rate of two cents per mile to strictly intrastate travel would cause a loss of.....	$11,456 65	
And in interstate business of.....	12,199 97	
Or a total loss of.....		$23,656 62
Leaving a deficit in the passenger operations of.....		$4,583 71
Based upon assessed value for the year 1906 the per cent. earned on its intrastate business in Virginia in 1905 under a maximum rate of two cents per mile, would have been:		
Assessed value		$2,813,660 00
14.16 per cent. devoted to intrastate business.....		398,414 00
Net earnings		4,433 00
Per cent. earned thereon.....		01.11
Based upon cost of reproduction, exclusive of equipment, the per cent. earned on intrastate passenger business in Virginia for the year ending		
20 June 30, 1905, under the maximum 2 cents per mile passenger rate would have been:		
Cost of reproduction, exclusive of equipment.....		$3,251,272 50
14.16 per cent. devoted to intrastate business.....		463,380 00
Net earnings		4,433 00
Per cent. earned		0.95

12. The complainant states that the effect upon its business for the year ending June 30, 1906, if the proposed two cent per mile maximum passenger rate provided for in said order of the State Corporation Commission had been in force is shown in the tables below:

Gross earnings in Virginia on all business, state and interstate, for the year ending June 30, 1905.....		$656,709 31
Operating expenses and taxes (86.16 per cent.).....		565,820 91
Gross earnings from interstate freight business in Virginia for the year ending June 30, 1906, were..		46,219 21
Gross earnings for intrastate passenger business in Virginia for the year ending June 30, 1906, were..		59,652 56
Total earnings from intrastate freight and passenger business		$105,871 77
The expense of doing this business, assuming that state business cost the same as the average of all business, 86.16 per cent. of $105,871.77, equals...		91,219 12
Net earnings		$14,652 65
If the pas-enger rate for the year ending June 30, 1906, had been two cents per mile, as in the proposed order, the actual loss on intrastate passenger earnings would have been.		17,891 76
21 This would have caused a deficit on intrastate business in Virginia of.....		3,242 11
Gross earnings on passenger business in Virginia, state and interstate, for the year ending June 30, 1906		117,380 09
Operating expenses and taxes (86.16 per cent.).....		111,134 69
Net passenger earnings.....		$16,245 40
If the maximum two cent passenger rate, as provided in the proposed order of the State Corporation Commission had been in effect in Virginia for the year ending June 30, 1906, it would have caused a reduction in the intrastate passenger business for the year of....	$17,894 76	
And on interstate passenger business in Virginia of	17,557 80	
Or a total reduction of.....		$35,452 56
Thus causing a net deficit from the passenger operations in Virginia for the year ending June 30, 1906, of		19,207 16

13. This complainant is further advised that it has, as an incident of its property, and as a property right, the right to increase its charges whenever, under the circumstances then existing, its charges are less than a reasonable compensation for the service which it renders, and that what may be a reasonable charge to-day for a service may become an unreasonably low charge to-morrow, or at any time thereafter, if conditions in respect to the expense of the service, or other conditions, are so changed as to make it so. The complainant is therefore advised that any action by a State
22 which attempts to fix a maximum charge beyond which the complainant cannot go, no matter how unreasonably low such maximum may become under changed conditions, would be to deprive the complainant of its property right to increase its rate up to what would, under such changed conditions be a reasonable compensation for the service rendered, and would, therefore, violate the Fourteenth Amendment to the Constitution of the United States. This complainant avers that the said order of the Commission undertakes to fix a maximum beyond which this complainant cannot go, no matter what may be the circumstances, and that, therefore, said order is unconstitutional and void, as being in violation of the Fourteenth Amendment to the Constitution of the United States. This complainant further shows that many of its existing rates are lower than is just compensation for the service rendered, and have heretofore yielded, and will continue to yield to the complainant, much less than a reasonable return upon the value of its property employed in such service. Since they were fixed the operating expenses of the complainant have, without its fault, been largely increased, the cost of equipment, of materials and supplies, and of labor, necessary for its operations, having all largely increased, so that the net return to this complainant has become much less than it has heretofore been, and, it is not now, and never has been, as much as this complainant is entitled to receive. All of said maximum rates fixed by the proposed order of the State Corporation Commission are lower than a just compensation for the services rendered, and are lower than would afford this complainant a reasonable and just return upon the value of its property used in performing the services in return for such rates, and that the effect of said order, because thereof, and also because said order undertakes to impose an immovable maximum, is to deprive this complainant of its property without due process of law, and of the equal protection of the
23 laws, and to take its property without just compensation, contrary to the said Fourteenth Amendment to the Constitution of the United States, the benefit and protection of which is again, in this regard, expressly set up and claimed.

14. This complainant further shows that its existing rates are properly adjusted in their relation between its interstate rates and its state rates in Virginia, and other States, and that all its charges are just and reasonable in themselves, and do not and will not give to this complainant more than a just and reasonable return upon the value of its property used in the transportation service which it renders to the public; and that any reduction in its revenues will

seriously embarrass and obstruct it in providing, and will deprive it of its power to properly provide the facilities which the public commerce dependent upon it for transportation absolutely requires for the movement of traffic, both intrastate and interstate. This compla-nant is advised that no State has a right to require that its own traffic between points within the State shall be given a preferential service, or shall be carried at preferential and lower rates than other traffic. No State has a right to require such discrimination or partially in favor of its own traffic. This complainant shows that the effect of the said rates proposed to be put into effect, pursuant to the order of the State Corporation Commission hereinbefore referred to, will be to destroy the proper adjustment of its intrastate rates in Virginia to its interstate rates generally, and to its intrastate rates in other States, and to require that a preference shall be given by this complainant, and an undue discrimination exercised by it, in favor of the intrastate passenger traffic in Virginia over the interstate passenger traffic carried by this complainant, and over the intrastate passenger traffic of this complainant in other States, and that to require such preferential and such undue discrimination in regard to the intrastate passenger traffic of the State of Virginia would
24 be so to regulate and burden interstate commerce as to violate the Commerce Clause of the Constitution of the United States, the benefit and protection of which this complainant respectfully sets up and claims.

15. This complainant further shows that there is no just reason for making a rule for some of the railroads different from that made for the complainant in respect to its passenger charges, and that there is no reasonable basis for such difference. Each of the carriers in said State of Virginia is, under the Constitution of the United States, entitled to charge a reasonable compensation for the services rendered, and the difference in rates ordered by the said Commission creates a merely arbitrary classification based upon no proper or sufficient reason. This complainant is, therefore, advised that the effect of said order in making such difference in classification and in permitting one carrier to charge for the same service in Virginia a greater sum than is permitted to another carrier in Virginia is to deprive this complainant of the equal protection of the laws contrary to the Fourteenth Amendment to the Constitution of the United States, which -his complainant, in this regard, here again respectfully sets up and claims.

16. It is provided by the Constitution of Virginia that any corporation failing or refusing to obey any valid order or requirement of the Commission within such reasonable time, not *than* more than ten days, as shall be fixed by the order, may be fined by the Commission (proceeding by due process of law) such sum not exceeding five hundred dollars as the Commission may deem proper, or such sum, in excess of five hundred dollars, as may be prescribed or authorized by law; and each day's continuance of such failure or refusal, after due service upon such corporation of the order or requirement of the Commission, shall be a separate offense. And it is further provided that the right of no person to institute and prose-

cute in the ordinary courts of justice any action, suit or
25 motion against any transportation or transmission company for any claim or cause of action against such company shall be extinguished or impaired by reason of any fine or other penalty which the Commission may impose, or be authorized to impose upon such company because of its breach of any public duty, or because of its failure to comply with any order or requirement of the Commission, but in no such proceeding by any person against such corporation, nor in any collateral proceeding shall the reasonableness, justness or validity of any rate, charge, classification or traffic, rule, regulation or requirement, theretofore prescribed by the Commission, within the scope of its authority, and then in force be questioned. If, therefore, the said order herein complained of, of the State Corporation Commission, shall be permitted to go into effect, it will subject this complainant to the danger of a multitude of suits based upon such order and to prosecutions for penalties to enormous amounts. The complainant further shows that unless it is relieved in this cause, the number of actions aforesaid, and the number of actions for penalties to which it will be thus exposed, and which will be thus instituted against it, will be enormous, and it would be seriously and unjustly burdensome and expensive to the complainant to be subjected to the numerous suits and prosecutions for penalties to which it would be subjected if relief herein is not granted. And the tendency of such suits, involving in the aggregate such enormous amounts, would be to depre-ate the value of complainant's property and the value of its stocks and bonds, and would greatly impair its credit, and consequently its ability to perform the public service required by the commerce tributary to its lines, and would inflict great and irremediable injury and damage, not only upon the complainant, and upon the holders of its stocks and bonds, but also upon the traveling public.

26 17. The complainant shows to the court that its purpose in this cause is, by an orderly proceeding in the courts, to obtain a judicial determination of its rights under the Constitution of the United States, and, if, as it is advised and believes, its just rights in the premises are imperiled, denied and encroached upon by the order of the State Corporation Commission hereinbefore complained of as contrary to the Constitution of the United States, then to obtain a judicial decree establishing and protecting the rights of this complainant, and to that end it is essential as alleged in this bill that an injunction shall be issued; but this complainant does not desire in any *may* injuriously to affect any lawful right of the State or of the people of Virginia, or of any other person, and hereby complainant offers and undertakes to do all in its power to maintain the *status quo* during the course of this judicial inquiry, and accordingly it consents, and it prays the Court, that there may be, and shall be adopted herein a proceeding analogous to that provided by sub-section (*c*) of Section 156 of the Constitution of Virginia, namely, the execution of a bond by the complainant conditioned to pay into the registry of this Court, from time to time, when and as the Court may so order, such sum or sums of money as shall be

equal to the difference between the aggregate passenger rates charged and received by it, and those fixed by the said order of the Commission, and that, as an incident thereto, the complainant shall give to any person purchasing a ticket for travel on its lines in the State of Virginia a transferable coupon or other written evidence, representing the sum to which such person or his transferee shall be entitled upon a final decision upholding the constitutionality of such order, such coupons or the amounts covered by such other written evidence, in that event to be payable out of the cash deposit in the registry of this Court; and that this complainant, from time to time,
shall report to the Court at intervals to be fixed by the order
27 of the Court herein statements showing the amount of such
passenger fares by it charged and collected, and that from time to time the complainant shall give such further bond or bonds as the Court may require, to secure the proper payment into Court of all amounts which finally it shall be adjudged that it should repay, or reimburse, under the final decision of this Court, or upon final review thereof; and that on a final determination herein that this complainant is entitled to the amounts covered by said bond or bonds, the said bonds be released and cancelled by the Court, and if any amounts shall have been paid into the registry of the Court pursuant thereto, that, upon such determination in favor of the complainant, the sum or sums so paid into the registry shall be repaid to the complainant, without further order of the Court herein.

18. The complainant avers that it will be irremediably injured unless an injunction be granted as hereinbefore prayed, and relief be given to it in this suit.

In consideration whereof, and forasmuch as your complainant is remediless in the premises under the rules of the common law, and can have adequate relief only in a Court of Equity, where matters of this nature are properly cognizable and relievable, and to the end, therefor, that the defendants hereinafter named may answer the several matters and things hereinbefore set forth as fully and particularly as if the same were again here repeated, and they were thereunto especially interrogated, but not under oath, answer under oath being expressly waived, the complainant prays that the said defendants be required as to answer, and that an injunction may be issued out of this Court enjoining and prohibiting the defendants, Beverley T. Crump, Henry C. Stuart and Joseph E. Willard, constituting the State Corporation Commission of Virginia, and each of them individually and jointly, as constituting said Corporation Commission of Virginia, and each and all of their
successors in office, from publishing, or having published,
28 in any newspaper published in the City of Richmond, Virginia, the said order of the State Corporation Commission, bearing date the 27th day of April, 1907, in respect to passenger rates, and from taking any other step or steps whatsoever under the Constitution or Laws of Virginia, to enforce the requirements of the said order, or so as to hinder or prevent the complainant from increasing its passenger charges, to the extent that such increase may

be fair, reasonable and just, and enjoining and prohibiting the defendant, R. T. Wilson, Clerk of the State Corporation Commission, and his successors in office, from publishing or having published, the said order of the Commission in any newspaper published in the City of Richmond, Va., and enjoining and prohibiting the owner, proprietor, manager, or agent of any such owner, proprietor or manager of any such newspaper in the City of Richmond, Va., from publishing or having published under the direction of the Commission, or the clerk thereof, such order of the Commission; and that the requirements of the said order of the Commission, and each and every provision of the said order, be declared to be unreasonable, unfair and unjust to the complainant, and unconstitutional, null and void.

That in the meantime, and until a decision can be had upon your complainant's motion for the injunction herein prayed, a restraining order may be granted, restraining the acts sought herein to be enjoined, your complainant hereby averring that there is danger of irreparable injury from delay if action should not be taken until such motion for an injunction can be tried upon its merits.

That a writ of injunction be issued, etc., commanding, etc., enjoining the defendants as above prayed.

That on a final hearing said injunction as herein prayed may be made perpetual; that the said order of the Commission, and each and every requirement thereof shall be declared null and void by
29 a decree of this Court, so far as the same relate to any of your complainants' said lines of railroad in Virginia, or to any of its business, and that your complainant may have such other and further relief as in justice it may be entitled to, and as to equity it is meet.

May it please your Honors to grant unto your complainant the temporary restraining order aforesaid, the writ of injunction aforesaid, and the writ of subpœna addressed to said defendants, Beverley T. Crump, Henry C. Stuart and Joseph E. Willard, individually, and as constituting the State Corporation Commission of Virginia, and R. T. Wilson, Clerk of the State Corporation Commission, commanding said defendants, under a penalty therein named, to appear in this Court, on some certain day, to be thereby fixed, to answer the premises and abide by and perform such degree as may be passed herein, but said answer as above stated not to be made on oath, answer under oath being expressly waived.

This is the first application by your complainant for a restraining order or injunction in this cause.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
By M. H. SMITH, *President.*

HENRY L. STONE,
THOS. B. HARRISON, JR.,
Solicitors for Complainant.

STATE OF KENTUCKY, *Jefferson County:*

Personally appeared before me, G. W. B. Olmstead, a Notary Public duly commissioned, qualified and acting as such for the above named county and State, M. H. Smith, who upon being first duly sworn, deposes and says:

That he is President of the Louisville & Nashville Railroad Company, the complainant in the foregoing bill of complaint,
30 that he is acquainted with the passenger traffic and tariff of said company; that he has read the foregoing bill and knows the contents thereof; that the facts therein stated, as of complainant's own knowledge, are true; and that the facts therein stated upon complainant's information and belief, he believes to be true.

M. H. SMITH.

Sworn and subscribed to before me this seventeenth day of May in the year 1907.

My commission as Notary Public expires on the 29th day of January, 1901.

In witness whereof I have hereunto signed my name and affixed my notarial seal in the city of Louisville, in the county of Jefferson, State of Kentucky, this 17th day of May in the year 1907.

[SEAL.] G. W. B. OLMSTEAD,
Notary Public.

31 EXHIBIT A.

Before the Honorable State Corporation Commission of Virginia.

In the Matter of the Proposed Order of the State Corporation Commission in Respect to Prescribing a Maximum Rate or Charge of Two Cents Per Mile for the Transportation of Passengers Over the Line of Any Railroad Company Operated by Steam in the State of Virginia Between Points Within the State of Virginia.

The Louisville & Nashville Railroad Company respectfully states that it is a railroad company, created, incorporated and organized under the laws of the State of Kentucky, and that it constructed and is operating that part of its road in the State of Virginia under and by virtue of the authority conferred upon it by an Act of the General Assemly of the State of Virginia of date March 30, 1887, and which act is entitled "An Act to authorize the Louisville & Nashville Railroad Company, a corporation created and organized under the laws of Kentucky, to construct and operate an extension of its line of railroad into and within the State of Virginia;" that, pursuant to said authority it extended its line into the State of Virginia, and has now in actual operation, and has had for some years past, about sixty-six (66) miles of railroad in the State of Virginia, and which is part of what is known as the Cumberland Valley Division.

It respectfully states that this Honorable Commission has caused to be published in the Richmond *Times-Despatch*, a newspaper published in the City of Richmond, Virginia, a notice dated the twenty-

first day of July, 1906, and addressed to the several steam railroad companies doing business in Virginia, and all persons interested, and notifying said steam railroad companies and such persons, that the Commission will, in the City of Richmond, on the first day of November, 1906, at twelve o'clock noon, in accordance with authority conferred upon it by the Constitution and Statutes of Virginia, hear and consider any objections which may be urged against a rule, regulation, order, or requirement of the Commission fixing and prescribing a maximum rate of two cents per mile for the transportation of passengers over the line of any steam railroad company in the State, between points within the State, the said maximum rate to be observed whether the transportation be entirely over the line of one railroad company, or joint over the lines of two or more railroad companies, and whether the contract for transportation be evidenced by an ordinary ticket or by mileage book or otherwise, the Commission to have, as authorized by law, the power and authority to provide for the more convenient and expeditious putting into effect and proper observance of said maximum rate.

32

This respondent is advised that at the meeting of the Commission on said November 1, 1906, an order was entered continuing the hearing until December 4, 1906, and providing that any railroad company which had not already appeared might file answer in the proceedings on or before December 1. This respondent files this answer, and shows the following causes why said rule, regulation, order and requirement in said notice mentioned and proposed should not be put into effect, so far as it is concerned:

1. It respectfully states that its rates and charges for the transportation of persons and property within the State of Virginia are reasonable and just, and have been such as to build up, as far as practicable, the business and communities along its line of railroad; and that its railroad in Virginia, as well as elsewhere, has been economically and efficiently managed; and that it has attempted in the adjustment of its classification of traffic and in the adjustment of its rates and charges for persons and property, to so adjust them as to develop to the highest practicable extent the business and communities along its line of railroad. It states that, in spite of these facts, its earnings for its intrastate business in the State of Virginia have never been, and are not now, sufficient to give it a fair return upon the value of the property devoted to its intrastate business in the State of Virginia. It states, further, that, not only have its earnings from its State business been insufficient to give it a fair return upon the value of the property devoted to that business, but that such earnings have been insufficient to give it any return at all upon the value of the property devoted to that business, after paying the necessary operating expenses and taxes, which have been kept down to the lowest possible amount consistent with good service to the public. There are now pending before this Honorable Commission certain proceedings, commonly known as the Virginia Classification and Rate case, to show cause why a certain proposed uniform classification for the State of Virginia *are* rate sheet thereto should not be adopted as the classification for freight

33

in the State of Virginia, and with the rates and charges as shown on the rate sheet thereto attached as applicable to this respondent. It states that it has heretofore filed its answer and offered its evidence in said proceedings whereby it was shown that the adoption and promulgation of said classification and rate sheet attached thereto as applicable to it would result in a substantial reduction in its revenues from its freight business in the State of Virginia, and would result in no return or profit whatever being made by it upon the value of its property in Virginia devoted to State freight business. It states that if the proposed maximum rate of two cents per mile is put into effect by an order of this Honorable Commission on its line in Virginia it will result in a further and very large re-
34 duction of its revenue derived from its passenger business, both State and interstate, in the State of Virginia; will result in a further loss to it below that shown in the freight rate hearing aforesaid, and will make the deficit heretofore shown to exist as the result of the operation of its State business in the State of Virginia very much greater than it now is, and would deprive it of its property without just compensation, deprive it of the equal protection of the laws, and take its property without due process of law, contrary to the Constitution of the United States, and particularly the Fourteenth Amendment thereof, the benefit and protection of which it respectfully invokes. It states that nearly if not all of the territory in the State through which i-s line of railway runs is sparsely inhabited, and that the proposed reductoin will not increase the travel to any extent, and that it will not be enabled by increase in travel to recoup itself for the loss by reduction in its revenue. It says, further, that while its earnings will be very largely reduced by the proposed order, if it shall be put into effect, yet that its expenses will not be reduced to any extent whatever, but will remain the same that they now are.

2. It respectfully states that it is entitled to charge and receive for the transportation of freight and passengers within the State of Virginia a fair and reasonable rate, and that, so long as it charges no more than a fair and reasonable rate for the transportation of freight and passengers within the State of Virginia, neither the State of Virginia nor any governmental agency thereof has the right to so adjust its rates and charges as to reduce its rates and charges, which it states are now entirely reasonable and just. It states that its right to charge a fair and reasonable rate for the transportation of freight and passenger is a proper-y right, and to deprive it of such right by reduction of its rates and charges—which are fair and reasonable, both to itself and to the passenger—would be to take its property without due process of law, contrary
35 to the Constitution of the United States, and particularly the Fourteenth Amendment thereof, the benefit and protection of which it respectfully invokes.

3. It states, further, that if the proposed order for a maximum rate of two cents per mile upon its line in Virginia should be put into effect by the Honorable Commission it would necessarily result in the disturbance and change of its interstate passenger rates now

established and in effect upon its line in the State of Virginia, and would necessarily and directly cause a large reduction in said rates and a large reduction in its revenue derived from the transportation of interstate passengers from points without the State to points within the State and from points within the State to points without the State, and would be, to that exten, a regulaion of interstate commerce; and it respectfully says that, under the Constitution of the United States, particularly paragraph 3, Section 8, Article 1, the Congress of the United States alone has power to regulate commerce between the States, and that the same is within the inhibition of the clause of the Constitution of the United States above referred to, the benefit and protection of which it respectfully invokes.

4. This respondent respectfully states that the proposed order, as set forth in said published notice, and the action of the Commission in the premises, are based upon certain public enactments by the people of the State of Virginia in convention assembled, as from Sections 155 and 156 of the Constitution of the State of Virginia, and which sections are especially referred to as though the same were herein at length fully set out. This defendant states that the said constitutional provisions referred to seek to confer confer upon this Commission administrative, executive, legislative and judicial powers and functions in respect to the same matter, and, as applied and proposed to be applied to this defendant and to its property in the premises, do not constitute due process of law, nor afford to this defendant the equal protection of the
36 laws, within the meaning of the Fourteenth Amendment to the Constitution of the United States.

This defendant further and additonally pleads and shows that Section 5 of the Bill of Rights of Virginia, which in the Constitution of that State is declared to be "the basis and foundation of government," provides as follows:

"That the legislative, executive and judicial departments of the State should be separate and distinct."

and the thirty-ninth section of the Constitution provides:

"Except as hereinafter provided, the legislative, and executive and jud-iary departments shall be separate and distinct, so that neither exercise the powers properly belonging to either of the others, nor any person exercise the power of more than one of them at the same time."

The single exception alluded to in Section 30 of said Constitution embraces matters relating to the peformance by transportation and transmission companies of their public duties and their charges therefor, in regard to which alone the separation of the legislative, executive and judicial departments is by the Constitution of Virginia denied.

While, therefore, for the protection of every other interest in Virginia, a judicial tribunal is provided by the Constitution and laws of that State which is not clothed with legislative and executive functions in respect to the matters in which it is required to exercise its judicial functions, and, therefore, by the law of its creation, is

capable of judicial consideration, and judicial action in respect to them, this, by the constitutional system of Virginia, is denied to transportation and transmission companies in respect to con-
37 troversies arising about their public duties and their charges therefor. In respect to these, this Honorable Commission has been established by the Constitution, which seeks to impose, and, if valid, does impose upon the Commission the duty, or invest it with the power, of instituting proceedings before itself in respect to the public duties of transportation and transmission companies and their charges therefor without any other party complainant except the Commission itself, of legislating thereon and making rules and orders in respect thereto, after the proceedings have been thus instituted before it by itself, of enforcing as a court, a compliance with the orders or requirements which it has made in the matters thus brought before it, and thus legislated on or ruled upon, and of adjudging or enforcing against the defendants the fines and penalties prescribed or authorized by the Constitution or by law.

This defendant respectfully submits that this Honorable Commission, by the law of its creation, is thus, and is otherwise as will appear from the said Constitution, made incapable of the judicial consideration and judicial consideration and judicial action in respect to the large interests above mentioned of transportation and transmission companies which due process of law requires, and, in subjecting these large interests to a tribunal thus created, and denying to them the protection of judicial tribunals which are not clothed with legislative and executive functions in respect to matters in which they are called upon to exercise their judicial functions such as are provided for every other interest in the State by the Constitution and laws of Virginia, the said Constitution not only does not constitute, in respect to transportation and transmission companies, due process of law, but it likewise denies to them the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States, which provides hat no State shall deprive any person of its property without due process of law, nor deny to any person within its juris-
38 diction the equal protection of the laws, and is in violation of Section 4 of Article 4, of the Constitution of the United States, which guarantees to each State a republican form of government.

And this respondent respectfully invokes the benefit and protection of the said Constitution of the United States as herein set forth.

And, having fully answered, this respondent prays to be hence dismissed, with its reasonable costs.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,

By —— ——, *Attorney.*

39 STATE OF KENTUCKY, *County of Jefferson, ss:*

C. B. Compton, being first duly sworn, deposes and says that he is the Traffic Manager of the Louisville & Nashville Railroad Company and that, as such Traffic Manager, he has general supervision

and control of the Passenger Department of said company, including the fixing of passenger rates and rules and regulations relative to the conduct of passenger transportation over the lines of said company, and that he has read the foregoing answer, and that the statements set forth therein are true, to the best of his knowledge, information and belief.

—— ——.

Subscribed and sworn to before me this — day of ——.
My commission expires January —, ——.

—— ——,
Notary Public.

40 *Temporary Restraining Order.*

Entered and Filed May 22nd, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

Louisville and Nashville Railroad Company, Complainant,
versus
Beverley T. Crump and Others, Defendants.

Upon reading the verified bill in this cause, and upon its being made to appear to the Court that there is danger of irreparable injury to the complainant from delay, unless the acts sought to be enjoined herein are restrained until a hearing upon the motion for an injunction in this cause, it is now ordered:

1. That the defendants, Beverley T. Crump, Henry C. Stuart, and Joseph F. Willard, constituting the State Corporation Commission of Virginia, and each and all of their successors in office, their and each of their servants, agents and employees, be, and they are, hereby restrained and enjoined from publishing, or having published, in any newspaper published in the City of Richmond the general order of the State Corporation Commission bearing date the twenty-seventh day of April, 1907, in respect to passenger rates, in the bill in this cause mentioned, and from taking any other step or steps whatsoever under the Constitution or laws of Virginia to enforce the requirements of the said order.

2. That the defendant R. T. Wilson, Clerk of the State Corporation Commission, and his successors in office, and his agents,
41 servants and employees, be, and they are, hereby restrained and enjoined from publishing or having published the said order of the State Corporation Commission in any newspaper published in the City of Richmond, Virginia.

3. That the owner, proprietor, or manager, or agent of any such owner, proprietor, or manager, of any newspaper in the City of Richmond, Virginia, be, and each and every one of them is, hereby restrained and enjoined from publishing, or having published, under the direction of the State Corporation Commission, or of the Clerk thereof, such order of the State Corporation Commission.

4. That the defendants and each of them show cause before this court in the United States Court Room at Asheville, N. C., at ten o'clock a. m. on Thursday, the 27th day of June, 1907, why an injunction *pendente lite*, as prayed in the bill, should not be issued, and that a copy of this order be served as soon as practicable upon each of the defendants.

5. That this restraining order shall be in force and effect from the date hereof, and until the determination of the complainant's motion for an interlocutory injunction herein; provided, however, that upon the failure of the complainant or some one for it, to execute, within ten days from this date, a bond in a penalty of Ten Thousand Dollars, payable to the defendants, with surety approved by one of the judges of this court, and conditioned substantially as hereinafter mentioned, the said restraining order shall stand dissolved. The condition of said bond shall be substantially as follows:

"The condition of the above obligation is such that

Whereas a restraining order has been made in the above entitled cause, by the terms of which the defendants, and each of
42 them, are restrained, until an application for an interlocutory injunction herein shall be determined, from doing or causing to be done, certain acts mentioned in said restraining order; now should said restraining order be dissolved or vacated as having been wrongfully issued or because the said acts were improperly restrained, then that the above named Louisville & Nashville Railroad Co. shall pay, or cause to be paid, all damages caused by the issue of said restraining order and the costs of this cause in connection therewith."

6. That, if for any *any* reason the determination of the motion for an injunction *pendente lite* be not made until after July 1, 1907, the date fixed in the said order of the State Corporation Commission of Virginia for the rates thereby prescribed to go into effect, then the complainant shall, prior to that date, apply to this court, or a judge thereof, for an order directing the giving of a bond by the complainant as prayed for in the seventeenth paragraph of the bill in this cause, to secure the payment into the registry of this court, in case the said order of the Commission herein complained of is in this cause finally declared valid and constitutional, of the excess which the complainant may receive on business covered by said order, over the amount it would have been entitled to receive on the basis of charges fixed by said order.

May 22nd, 1907.

J. C. PRITCHARD,
United States Circuit Judge.

And thereupon came the above named complainant and filed the bond as provided in this order, which bond was this day ap-
43 proved by a judge of this court as a full compliance with the provision thereof requiring the giving of a bond.

May 22nd, 1907.

J. C. PRITCHARD,
United States Circuit Judge.

Marshal's Return.

Executed May 23rd, 1907, by delivering in person to Beverley T. Crump, Henry C. Stuart, Joseph E. Willard and R. T. Wilson at the office of the State Corporation Commission of Virginia in the City of Richmond, Va., and to John Stewart Bryan at the office of the Richmond Times-Dispatch Company in the City of Richmond, Va., he being a Director and General Manager of the Richmond Times-Dispatch, the President of the Times-Dispatch not being found, the said Times-Dispatch being a newspaper published in the City of Richmond, Va., and to A. R. Holderby, Jr., at the office of the Evening Journal in the City of Richmond, Va., he being the General Manager, Secretary and Treasurer and a Director of the Evening Journal, a newspaper published in the City of Richmond, Va., the President of the said Evening Journal not being found, and to Alfred B. Williams at the office of the News-Leader in the City of Richmond, Va., he being the President of the News-Leader a newspaper published in the City of Richmond, Va., to each a true copy of this order.

MORGAN TREAT,
United States Marshal.

44 *Bond.*

Filed May 23rd, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Complainant,
versus
BEVERLEY T. CRUMP and Others, Defendants.

Know all men by these presents that, Louisville & Nashville Railroad Company, a corporation of the State of Kentucky, the principal office of which is in the City of Louisville in said State, as principal, and the American Surety Company of New York, as surety, are held and firmly bound unto the defendants, Beverley T. Crump, Henry C. Stuart, Joseph E. Willard, R. T. Wilson, and any other person or persons interested, in the just and full sum of Ten Thousand Dollars, for the payment of which well and truly to be made we do hereby jointly and severally bind ourselves and each of our successors firmly by these presents.

Signed and sealed this 20th day of May, A. D., 1907, the said Louisville & Nashville Railroad Company being signed by E. L. Smithers, Assistant Secretary, who also affixed hereto the corporate seal of said Company, and the said American Surety Company of New York, acting by Robert Le Masurier, who signed hereto the name of said Company as Agent and affixed hereto its corporate seal.

The condition of this obligation is such that

Whereas a restraining order has been made in the above entitled

cause by the terms of which the defendants, and each of them, are restrained until an application for an interlocutory injunction herein shall be determined, from doing or causing to be done certain acts mentioned in said restraining order; nor should said restraining order be dissolved or vacated as having been wrongfully
45 issued, or because the said acts were improperly restrained then, if the above named Louisville & Nashville Railroad Company shall pay, or cause to be paid all damage caused by the issue of said restraining order, and the costs of this cause in connection therewith, then this obligation to be null and void, otherwise to be and remain in full force and effect.

[Seal of Louisville & Nashville Railroad Company.]

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
By E. L. SMITHERS, *Assistant Secretary.*

[Seal of the American Surety Company of New York.]

AMERICAN SURETY COMPANY OF NEW YORK,
By ROBT. LE MASURIER, *Agent.*

Approved as a full compliance with the provision of the restraining order entered in this cause on the 22nd day of May 1907, requiring the giving of a bond.

J. C. PRITCHARD,
United States Circuit Judge.

This —— 22nd, 1907.

46 *Chancery Subpœna.*

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

The President of the United States of America to Beverley T. Crump, Henry C. Stuart, Joseph E. Willard, individually and as constituting the State Corporation Commission of Virginia, and R. T. Wilson, Clerk of the State Corporation Commission of Virginia, Greeting:

We command you, and every one of you, that you appear before our judges of our Circuit Court of the United States of America, for the Eastern District of Virginia, at the Court Room in the Custom House in the City of Richmond, in said District, on the first Monday in the month of July next, to answer the Bill of Complaint of Louisville & Nashville Railroad Company this day filed in the Clerk's Office of said Court, in said City of Richmond, then and there to receive and abide by such judgment and decree, as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the Eastern District of Virginia to execute:

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Richmond aforesaid,

this 23rd day of May, in the year of our Lord one thousand
47 nine hundred and seve-, and of our Independence the 131st.

[Seal of United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY, *Clerk.*

MEMORANDUM.—The above-named defendants are notified that unless they enter their appearance in the Clerk's Office of said Court, at Richmond aforesaid, on or before the day to which the above writ is returnable, the Complaint will be taken against them as confessed, and a decree entered accordingly.

JOSEPH P. BRADY, *Clerk.*

Marshal's Return.

Executed May 23, 1907, by delivering in person to Beverley T. Crump, Henry C. Stuart, Joseph E. Willard and R. T. Wilson at the office of the State Corporation Commission of Virginia, in the City of Richmond, Virginia, to each a true copy of this subpœna, together with a certified copy of the Bill of Complaint filed in this cause.

MORGAN TREAT,
United States Marshal.

48 *Joint and Separate Answer of Defendants to a Rule to Show Cause Why a Temporary Injunction be Not Awarded.*

Filed June 27th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Complainant,

v.

BEVERLEY T. CRUMP, H. C. STUART, and JOSEPH E. WILLARD (Individually and as Constituting the State Corporation Commission of Virginia) and R. T. WILSON (Clerk of the State Corporation Commission), Defendants.

Joint and Separate Answer of said Defendants to a Rule to Show Cause Why a Temporary Injunction be Not Awarded.

The joint and separate answer of the above named defendants to a rule, heretofore awarded in this cause and duly served upon
49 them, requiring them, and each of them, to show cause, before this court, in the United States court-room at Asheville, North Carolina, at 10 o'clock a. m., on the 27th day of June, 1907, why an injunction *pendente lite*, as prayed in the bill of the above named plaintiff, should not be issued.

These respondents (saving and reserving to themselves, jointly and separately, the right to all just and proper exceptions and defenses

which they, or any of them, have, or may have, to this cause, either as to the form or as to the substance thereof, and without waiving any valid objection, or objections, which they, or any of them have, or may have, to the jurisdiction of this Honorable Court in this cause, but, on the contrary, expressly denying any such jurisdiction), for answer to said Rule, say:

First. That said city of Asheville, in the State of North Carolina, was and is beyond the territorial jurisdiction of this Honorable Court; and, therefore, as said defendants are advised and respectfully insist, this Honorable Court cannot lawfully assemble, convene, sit, receive or hear answers, motions or pleadings of the litigants in this cause, nor take any action whatever therein, at the said city of Asheville, and that this Honorable Court, and each of the Honorable Judges thereof, was and is without jurisdiction to issue said Rule, or any Rule whatsoever, returnable before this Honorable Court at said city of Asheville; and said defendants are advised and respectfully insist that, for these reasons, said Rule was and is void and of no effect, and that these defendants ought not, nor, ought any of them, to be held or required to further answer the same.

Second. That the said defendants, Beverley T. Crump, H. C. Stuart, Joseph E. Willard, and R. T. Wilson, have not, nor hath either of them, any personal, private or individual interest in, or connection with, the subject matter of this suit; but, on the contrary, none of them ever was interested therein, or connected therewith, except in his public and official capacity and character, as
30 follows: The said Crump, Stuart and Willard, at the time of the institution of this suit, constituted the State Corporation Commission of Virginia, a Department of the Government of that State, as hereinafter more fully set forth, and the said R. T. Wilson was the Clerk of said Commission; and it is only in their respective public and official characters or capacities as Members and Clerk of said Commission that said defendants, or any of them, ever were interested in, or connected with, the subject matter of this suit—the acts, against which an injunction is prayed for in the Bill, being acts which could not possibly be performed by said defendants, or any of them, except in their said official capacities or characters, and not otherwise. The said State Corporation Commission is one of the principal Departments of the Government of the State of Virginia, and was created and established, and its functions, powers, duties and methods of procedure prescribed and provided for, by the Constitution and Statutes of said State, as will more fully appear from the One Hundred and Fifty-fifth Section, and the One Hundred and Fifty-sixth Section of the Constitution of the said State, and from the Act of the General Assembly of said State, entitled:

"An Act to put into effective operation the provisions of the Constitution relating to the creation, appointment, and organization of the State Corporation Commission, its jurisdiction, powers and duties; the qualification of its members and officers thereof, their appointment and salaries; the location of its offices and places and times of its public sessions; *its writs, processes, orders, findings and judg-*

ments; appeals from its orders, findings, and judgments and its expenses, &c.",

which was approved April 15th, 1903; of which said constitutional provisions and statute, complete copies, duly certified by the Secretary of the Commonwealth of Virginia, under the Lesser Seal of said Commonwealth, are filed, and prayed to be taken and read
51 by this Honorable Court, along with, and as parts of, this answer, said copies being marked, respectively, "Defendants' Exhibit No. 1", and "Defendants' Exhibit No. 2". The said constitutional provisions and statute, as set forth in said copies thereof, together with two other statutes of said State, of which true copies, similarly certified, are herewith filed, marked respectively, "Defendants' Exhibit A", and "Defendants' Exhibit B", and prayed to be taken and read as parts of this answer, are (as set forth in said certificates of the Secretary of the Commonwealth attached to said copies) still in full force and effect, and have been so continually since prior to January 1st, 1904, and these defendants aver that they represent the entire constitutional, and statutory, provisions of the State of Virginia on the subject, in effect from January 1st, 1904, to the present time. From these constitutional, and statutory, provisions it will clearly appear, as these defendants respectfully submit, that (except in certain cases of mandamus or prohibition) said State Corporation Commission has no more power, under the laws of Virginia, of suing or being sued, or of pleading or of being impleaded, in any court of law or chancery, than has the General Legislature, or Supreme Court of Appeals, of that State. In view, therefore, of the matters and things set forth and referred to in this Clause Second of their Answer to said Rule, these defendants are advised and respectfully insist, that this suit is such a suit against the State of Virginia, as this Honorable Court was, and is, without jurisdiction to entertain, or to enter any order or decree, or to take any other action therein, except to dismiss the same; and these respondents, therefore, respectfully insist that they ought not to be held or required to further answer the same.

Third. That, in the said proceedings before the State Corporation Commission of Virginia, in which said order of April 27th, 1907, was entered, the Commonwealth of Virginia was required by law to be the plaintiff, and, as a matter of fact, was the plaintiff therein, both in form and in substance; that, by the said Constitution and laws of Virginia, an appeal can be taken from said order of
52 April 27th, 1907, to the Supreme Court of Appeals of Virginia, by the Commonwealth of Virginia, as appellant, or it can be taken by the said plaintiff herein, as appellant, in which latter case, however, it is provided and required by the said Constitution and laws of Virginia, that the said Commonwealth of Virginia must be made the appellee; and these defendants are advised and respectfully insist that this proceeding now here pending, to suspend and set aside, or, at any event, to review the said order of April 27th, 1907 (in which the Commonwealth of Virginia is plaintiff, as aforesaid, from which the said Commonwealth of Virginia may take an appeal, as aforesaid, and from which the said plaintiff herein can

also take an appeal, as aforesaid, but only by making the said Commonwealth of Virginia the appellee therein), is in substance and effect such a suit against the Commonwealth of Virginia as this Court is without jurisdiction to entertain; therefore, and for this reason also, these respondents are advised and respectfully insist that this Honorable Court was, and is, without jurisdiction to entertain this suit, or to enter any order or decree, or to take any other action herein, except to dismiss the same; and these respondents, therefore, respectfully insist that they ought not to be held or required to further answer the same.

Fourth. That, on the first day of June, 1907, the said Beverley T. Crump, who, up to that time, had been a Member, and the Chairman of the said State Corporation Commission of Virginia, did (pursuant to his previous resignation) retire from said Commission and cease to be the Chairman, or a Member thereof; that, thereupon, his place as a Member of said Commission was forthwith filled by the Honorable Robert R. Prentis, who had been duly appointed, according to law, by the Honorable Claude A. Swanson, Governor of Virginia, to fill the vacancy caused by the said resignation of said defendant Crump, and who has duly qualified as a Member of said Commission according to law; that, upon so taking office as a Member of said Commission, the said the Honorable Robert R. Prentis, was, by the Members of said Commission, duly elected, according
53 to law, Chairman of said Commission, and forthwith qualified as such, since which time, to-wit, since the first day of June, 1907, the said Commission has continuously been, and still is, composed of the said the Honorable Robert R. Prentis and said defendants Stuart and Willard, as the sole Members thereof, the said Prentis being the Chairman of said Commission, as aforesaid; that said Crump, having, on June 1st, 1907, ceased, as aforesaid, to be a Member of the said Commission, has not been at any time since the 1st day of June, 1907, in any manner whatsoever, connected with said Commission, and, therefore, is no longer interested in, or in any way connected with, the subject matter of this suit; and said defendant Crump, having, by said termination of his connection with said Commission, become incapable of performing, or of, in any manner, controlling or participating in, any of the acts against which said injunction is prayed for, he is advised and respectfully insists that, in any event, this suit should be no longer maintained as to him, and that he should accordingly be hence dismissed as one of the defendants herein.

Fifth. That the said defendants have not, nor have any of them, any personal, private or individual interest in or connection with, *with* the subject matter of this suit, but are only interested therein, or connected therewith, insofar as they constitute the State Corporation Commission of Virginia and the Clerk of said Commission; that the said State Corporation Commission of Virginia was created and established, and its functions, powers, duties and procedure prescribed and provided for, by the Constitution and Statutes of said State, as will more fully appear from the One Hundred and Fifty-fifth Section, and the One Hundred and Fifty-sixth Section, of the

Constitution of said State, and from the Act of the General Assembly of said State, entitled:

"An Act to put into effective operation the provisions of the Constitution relating to the creation, appointment and organization of the State Corporation Commission, its jurisdiction, powers
54 and duties; the qualification of the Members and officers thereof, and their appointment and salaries; the location of its offices and places and times of its public sessions; *its writs, processes, orders, findings and judgments; appeals from its orders, findings, and judgments, and its expenses, &c.*,"

which was approved April 15th, 1903; of which said constitutional provisions and statute, complete copies, duly certified by the Secretary of the Commonwealth of Virginia, under the Lesser Seal of said Commonwealth, are (as heretofore stated) filed, and prayed to be taken and read by this Honorable Court, along with, and as parts of, this Answer—said copies being marked, as aforesaid, "Defendants' Exhibit No. 1" and "Defendants' Exhibit No. 2," respectively; that the said constitutional, and statutory, provisions, as set forth in said copies thereof, are, together with said other two statutes of said State, of which true copies, similarly certified, are (as heretofore stated) filed with this answer, marked, respectively, "Defendants' Exhibit A" and "Defendants' Exhibit B," and prayed to be taken and read as parts of this Answer, (as set forth in said certificates of the Secretary of the Commonwealth, attached to said copies) still in force and effect, and have been in full force and effect continuously since prior to the first day of January, 1904, and these defendants aver that they represent the entire constitutional, and statutory, provisions of the State of Virginia on the subject, in effect from the first day of January, 1904, to the present time; that, on the 6th day of October, 1903, Rules of Order, Practice and Procedure before the said State Corporation Commission of Virginia were duly made and prescribed by said Commission and entered upon the records of its proceedings and printed and distributed according to law; that a full, complete and true copy of said Rules of Order, Practice and Procedure, as they have existed since the first day of January, 1904, to the present time, and still exist, duly certified by the Chairman and Clerk of said Commission under the seal of said Commission, and further veri-
55 fied by the affidavit of said R. T. Wilson, is filed, and prayed to be taken and read by this Honorable Court, along with, and as a part of, this Answer—the said copy being marked "Defendants' Exhibit No. 3"; that the proceedings before the said State Corporation Commission which are referred to in the plaintiff's Bill, and in which the said order in respect to the passenger rates of the plaintiff was entered by the said Commission on the 27th day of April, 1907, were taken and had before the said Commission in strict conformity, in every respect, with the provisions hereinbefore mentioned of the Constitution and Statutes of the State of Virginia, and with the said Rules of Order, Practice and Procedure before the said State Corporation Commission; that the initial step in said proceedings was, as set forth in the Bill herein, a Notice, of which the following is a copy:

"*Notice.*

Office of the State Corporation Commission.

RICHMOND, VA., *31st Day of July,* 1906.

To the Several Steam Railroad Companies Doing Business in Virginia and all Persons Interested:

Take notice that the State Corporation Commission will, in the city of Richmond, on Thursday, the first day of November, 1906, at 12 o'clock, noon, in accordance with the authority conferred by the Constitution of Virginia and the statutes enacted by the General Assembly of Virginia pursuant thereto, hear and consider any objections which may be urged against a rule, regulation, order or requirement of the Commission fixing and prescribing a maximum rate of charge of two cents per mile for the transportation of passengers over the line of any railroad company in this State, operated by steam, between points within the State of Virginia, said maximum rate to be observed whether the transportation be entirely over the line of one railroad company, or joint transportation over the
56 lines of two or more companies; and whether the contract for transportation of a passenger or passengers be evidenced by an ordinary ticket between stations, by a mileage book or otherwise; the Commission to have, as authorized by law, the power and authority from time to time, and as often as circumstances may require, to change or revise the rate, or, by rules, regulations and requirements, to provide for the more convenient and expedient putting into effect and proper observance of said maximum rate. At the said hearing and consideration of the said maximum rate of two cents per mile, the method, time and extent of promulgation and putting into effect of the same will be heard and determined by the Commission, to the end that a maximum rate for passenger transportation may be put into effect and be made applicable to all steam railroad companies doing business in Virginia, and be properly observed by them in the transportation of passengers.

BEVERLEY T. CRUMP, *Chairman;*
H. C. STUART,
JOSEPH E. WILLARD,
Commissioners."

That said Notice was forthwith duly published according to law once a week, for four consecutive weeks, in the Times-Dispatch, a newspaper of general circulation published in the city of Richmond; that, in accordance with said Notice the said plaintiff herein appeared before the said State Corporation Commission of Virginia at the time and place fixed by said Notice, to-wit, on the first day of November, 1906, at 12 o'clock, noon, at Richmond, Virginia, and filed its Answer, a copy of which is filed with the Bill in this cause, marked "Exhibit C"; that in its said Answer, as will be more fully seen from said "Exhibit C" with the plaintiff's Bill herein, the following five grounds of defense were set up and relied upon (they being the

identical grounds (with two or three immaterial exceptions)
57 upon which the plaintiff here seeks to attack and overthrow the order of the Commission in that proceeding), to-wit:

1st. That, because of the fact that the said Corporation Commission was clothed with Legislative, Judicial and Executive powers, its dealings with the said plaintiff herein, in respect to the regulation of its rates, would not amount to *due process of law;* and that, for the same reason, said plaintiff herein, if compelled to submit to the jurisdiction of said Commission in the premises, would be denied the *equal protection of the laws;*

2nd. That, by reason of certain previous Acts of the General Assembly of Virginia, that State could not, through any instrumentality, regulate the rates of said plaintiff herein, under existing conditions, without *impairing the obligation of the State's alleged Contract with said Company;*

3rd. That *any* regulation of the intra-state passenger rates of said Company would, of necessity, amount to a regulation of the inter-state passenger rates of said Company, in violation of the *Commerce Clause* of the Constitution of the United States;

4th. That the suggested rate would, if imposed upon the Company, be *confiscatory of its property;* and

5th. That the existing rates of the Company were *fair and reasonable.*

That, thereupon, the said Commission entered into a most elaborate consideration and investigation of each of the questions of law and of fact raised by said Notice and said Answer; that, as will more fully appear by the affidavit of the said R. T. Wilson, Clerk of said Commission, herewith filed, and prayed to be
58 taken and read by this Honorable Court along with, and as a part of this Answer, marked "Defendants' Exhibit No. 4," the Commission spent many days in the hearing of the matters involved in said Notice and Answer, at which hearing the said complainant herein appeared and made an elaborate defense, introducing testimony covering several thousand pages of record; that said hearing was not concluded until the said plaintiff herein had, through its counsel, announced that its case was complete; that, after the said hearing had concluded, to-wit, on the 27th day of April, 1907, said State Corporation Commission entered its order in said proceedings fixing the maximum rates of the said plaintiff herein for the transportation of passengers in its intra-state Virginia business, which order is set out at length in the plaintiff's Bill, but, at the time of entering said order, and along with the same, and as a part of the official and legal record of said proceedings, the said Commission filed an elaborate opinion which thereby became, and was, and still is (in accordance with law), a part of the official record of said proceedings, a true copy of which opinion will be found in the copy of said official record hereinafter filed, marked "Defendants' Exhibit No. 5," and is prayed to be taken and read by this Honorable Court, along with, and as a part of this Answer; that, in accordance with the requirements of law, and of the uniformly established custom and practice in all such cases, a written record of all the proceedings (except the evidence) in said matter, from its incep-

tion up to and including said order of April 27, 1907, was duly made in the regular official "judicial order book" of the Commission by its Clerk and signed by its Chairman in exactly the same manner in which records of their proceedings are made, verified and preserved by the ordinary judicial courts of the State of Virginia; that the said "judicial order book" of the Commission and its contents are public records under the laws of Virginia just as are the order books of ordinary judicial courts of that State—said record, however, in its present shape does not now include the evidence in the cause,

59 but all the documents and all oral testimony (of which latter a complete stenographic report is preserved by the Commission) constituting such evidence *is* in the custody of the Commission, and preserved by it to be hereafter made a part of the record and as such to be duly certified by the Commission along with the other parts of the record, to the Supreme Court of Appeals of Virginia, upon the taking of an appeal from said order of April 27, 1907, in case such appeal be taken; that a complete and true copy of the record of said proceedings, as it appears upon said judicial order book of the Commission (verified by the affidavit thereto attached of said R. T. Wilson, Clerk of said Commission) is herewith filed, marked "Defendants' Exhibit No. 5," and is prayed to be taken and read by this Honorable Court along with, and as a part of, this Answer; that, as above stated, all of the documentary evidence, and a full stenographic report of all the oral testimony adduced in said proceedings—amounting to several thousand pages—*is* preserved by the Commission in its archives ready to be made a part of the record of said proceedings and certified as such, by the Commission, according to law, along with the residue of the record of the case, to the Supreme Court of Appeals of Virginia, upon an appeal to that tribunal from the said proceedings before said Commission, including its said final order therein of April 27, 1907, which appeal, either the Commonwealth, or said plaintiff Company herein, may, as aforesaid, under the express provisions of the laws of Virginia, take as of right, but which neither has yet taken nor applied for; and said defendants say that the said State Corporation Commission of Virginia was, and is, and always has been (particularly with respect to the said order of April 27, 1907, and the said proceedings in which said order was entered), a "court" of the State of Virginia, within the true meaning, purport, intent and purview of Section 720 of the Revised Statutes of the United States, which provides, that,

"A writ of injunction shall not be granted by any court of the United States to stay proceedings in *any* court of a State, ex-

60 cept in cases where such injunction may be authorized by any law relating to proceedings in Bankruptcy";

and that this suit is not a case within the exception specified in the said Section 720 just quoted. Therefore, and because of the matters and things set forth or referred to in this Fifth Clause of this Answer, these defendants are advised and respectfully insist that this Honorable Court is without any jurisdiction to entertain this suit, or to enter any decree or order, or to take any other action, herein

(save to dismiss the suit), because, as these defendants insist the sole object of this suit, and the sole ground upon which the equitable interference of this court is prayed, is the obtaining of an injunction which, if obtained, would be, (as these defendants are advised and respectfully insist) in violation of the express provisions of the said statute of the United States last above mentioned; and these respondents, therefore, respectfully insist that they ought not to be held or required to further answer in this cause;

Sixth. That, under the Constitution and laws of the State of Virginia, as set forth in the Exhibits herewith filed, the State Corporation Commission of Virginia is expressly made a judicial court for the enforcement, by its own appropriate process, of compliance with the requirements of its said order of April 27th, 1907; and it is not requisite, necessary nor appropriate for the said Commission to bring suit, nor has it the power of suing, in any other tribunal, for the enforcement of any of its orders, nor is the said Commission, in the supervision, regulation or control of Railroad Companies, authorized, to prosecute or defend litigation of any kind, in any tribunal, for any purpose. Therefore, and for this reason also, these defendants are advised and respectfully insist that the injunction prayed for in the plaintiff's Bill to restrain the said Commission and its members from taking any steps to enforce the said order of April 27th, 1907, would, if granted, have only the effect of restraining and enjoining a judicial court of the State of Virginia from en-
61 forcing by its own appropriate process, compliance with an order theretofore issued by it within the limits of its jurisdiction, and from which no appeal lies to this court, and over which this court has no power of review; these respondents, therefore, respectfully insist that this Court was, and is, without jurisdiction to entertain this suit, or to enter any order or decree, or to take any other action herein, except to dismiss the same; and these respondents, therefore, respectfully insist that they ought not to be held or required to further answer the same.

Seventh. That no persons are, or can be, impleaded in this cause with whom the plaintiff herein may legally or properly litigate the question of the reasonableness or validity of the rates imposed upon the plaintiff by said order of April 27th, 1907. These defendants have not, nor have any of them, any personal, private, or individual interest in that question, which would authorize them as individuals to litigate the same, nor are they, or any of them, by law, charged with the duty, or clothed with the power, in any official or public capacity or character, of conducting or defending any such litigation in any court whatsoever; the said State Corporation Commission, as a public body, in the exercise of its power under said constitutional provisions, is wholly without any power or authority of law to prosecute or defend suits, actions, or proceedings of any kind, or to appear as a suitor for any purpose, in any court whatsoever,—as much so as is the Supreme Court of Appeals, or the General Assembly, of Virginia; and, finally, the Commonwealth of Virginia has not consented to be impleaded in this Honorable Court for the purpose of litigating the question of the reasonableness or legality of the said rates prescribed by the said order of April 27th,

1907. Therefore, for this reason also, these defendants are advised and respectfully insist, that this Honorable Court is without jurisdiction to entertain this suit, or to enter any order or decree, or to take any further action therein, except to dismiss the same;
62 and these respondents, therefore, respectfully insist that they ought not to be held or required to further answer the same.

Eighth. That before said hearing was concluded by said Commission in said proceedings, to-wit, on March 16th, 1907, the Commission gave a written notice to each of the counsel, of record in said proceedings, for the Railroad Companies which had appeared therein, including the plaintiff herein, said notice being in the form of a letter addressed by said Commission to each of said counsel by name, of the body of which letter the following is a copy:

"GENTLEMEN: We are addressing this communication to all the counsel of record in the proceedings before the Commission against the steam railroads of the State, relative to prescribing a maximum passenger rate of two cents per mile, in order to notify all counsel as follows: This proceeding will be called on Wednesday, the 27th inst. at eleven o'clock in the morning, in the court room of the Commission, at which time the hearing will be resumed and continued until completed. Counsel for the Commonwealth will be expected to be fully prepared to submit to the Commission all evidence, oral or documentary, which they may desire to put in on behalf of the Commonwealth. The defendant railroad companies will be expected to be prepared to put in any further evidence, or bring before the Commission any further fact which they may desire the Commission to consider in this proceeding. At the close of the evidence on both sides, the Commission will be prepared to hear argument on the issues arising in this proceeding, to the end that, at the sitting of the Commission, commencing on the 27th day of March, this proceeding will be carried on consecutively from day to day until concluded and submitted to the Commission for its consideration and action."

63 That accordingly, on March 27th, 1907, the Commission again assembled in public session for the final hearing of said proceeding, and after the Chairman of the Commission had read aloud at said session of the Commission, the above notice, the further taking of evidence in said proceeding was resumed, and the hearing by the Commission was not concluded until the counsel for the said plaintiff herein had announced that his client had nothing more to say or offer in its behalf; and these defendants are advised and respectfully insist, that whether the said State Corporation Commission of Virginia be regarded as a judicial, a legislative or an administrative tribunal, or as a combination of any two or more of such bodies, yet the said proceedings, which resulted in the said order of April 27th, 1907, and which are the regular proceedings prescribed by the Constitution and laws of the State of Virginia and the regularly established practice of the said Corporation Commission in all such cases, constituted due process of law as to the said plaintiff herein, within the true intent and meaning of the Fourteenth Amendment of the Constitution of the United States; and these respondents are further advised and respectfully insist that the said

plaintiff herein, having been duly made a party to said proceedings, and having appeared and made therein a full defence and submitted the matter to the Commission for its decision and action (as, these defendants aver, the said plaintiff herein did do), and the said Commission, having, thereupon, decided the questions involved in said proceedings and so submitted to it for decision, and having taken action upon the matter as set forth in its said order of April 27th, 1907, the said plaintiff herein thereupon became, was, and is, bound by that decision and action of the Commission and cannot now ignore nor disregard the same, but must appeal from it in the manner provided by law, or else abide by, and obey, it; and these defendants are further advised and respectfully insist, that this Honorable Court, being without jurisdiction to entertain an appeal from said order of April 27th, 1907, is equally without jurisdiction to ignore,
64 disregard, reverse, or overrule the same, and that to enjoin the enforcement of that order by the tribunal which entered it and which, by the laws of Virginia, is alone charged with the enforcement of that order, is tantamount to, and in substance, and effect, the same as, to ignore, disregard and overrule that order; and these defendants aver that every question of law or fact involved in this suit (except only the question of the jurisdiction of this Court) was directly involved in the said proceedings before said Commission, which culminated in said order of April 27th, 1907, and that (with two or three immaterial exceptions) every such question was expressly raised and pressed in the said proceedings by said plaintiff herein, and was considered and decided, expressly or by necessary implication, by the said Commission in the said proceedings; and these defendants aver that there was no evidence, or defence, or right, or matter, of any kind (whether legal or equitable, whether depending upon questions of law or of fact, or both, and whether arising under the Constitution and laws of the United States or otherwise), which the plaintiff herein could assert or rely upon in its behalf in this suit (if it should be proceeded with as prayed for in the plaintiff's Bill), that the said plaintiff herein did not have both the express and plain legal right to introduce and rely upon, and the fullest and fairest opportunity of introducing and relying upon, in its behalf, throughout said proceedings before said Commission which culminated in said order of April 27th, 1907, of which opportunity the said plaintiff herein most freely availed itself, without limitation or hindrance; and these defendants say, that if this suit could legally proceed, its future proceedings would and could be nothing else than a repetition of exactly the same hearing already had, upon the same evidence already adduced, and upon the same questions already decided, in said proceedings before said Commission culminating in said order of April 27th, 1907; and these defendants further aver, that the Constitution and laws of the State of Virginia make full, ample and liberal provision for an appeal of right by the said plaintiff herein, to the Supreme Court of Ap-
65 peals of Virginia, from the said decision and action of the said State Corporation Commission, and for the suspending of the operation of said order of April 27th, 1907, pending the decision of such an appeal; yet these defendants say, that the said plain-

tiff herein has not taken, nor applied for, any such appeal, although there is nothing whatever to prevent, hinder, delay, or obstruct its applying for and obtaining such an appeal and in addition thereto, a supersedeas (for which, ample and liberal provision is also made by law) suspending the operation of such order pending the decision of such appeal; and these defendants are advised that, if, upon the decision of any such appeal, the said Railway Company considers that any of the rights secured to it under the Constitution and laws of the United States have been ignored or violated, or that any question, arising under the Constitution and laws of the United States and involved in said proceedings or appeal, has been erroneously decided to its detriment, by the said Supreme Court of Appeals of Virginia upon such appeal, then, and in that event, the Constitution and laws of the United States provide a plain, simple, adequate, perfect and complete remedy for the said plaintiff herein, in the form of an appeal to the Supreme Court of the United States from any such adverse decision by the said Supreme Court of Appeals of Virginia upon such appeal from the said Corporation Commission; therefore, and for these reasons also, these respondents are further advised and respectfully insist that this Honorable Court is without jurisdiction to entertain this suit, or to enter any order or decree, or to take other action herein, except to dismiss the same; and these respondents, therefore, respectfully insist that they ought not to be held or required to further answer the same.

Ninth. That the said proceedings before the State Corporation Commission of Virginia, in which said order of April 27th, 1907, was entered, are not yet completed, but are still pending before that body; and these defendants are advised and respectfully insist that if said Commission be considered and treated as a court, within
66 the purview of said Section 720 of the Revised Statutes of the United States, then, and in that event, this Court is, as hereinbefore pointed out, without jurisdiction to entertain this suit, or to grant said injunction prayed for in the Bill of the plaintiff herein; and that if, on the other hand, the said Commission be regarded and treated as a legislative body, then, and in that event, this Court is equally without jurisdiction to enjoin the proceeding of such a body in the course of the enactment of a rate regulation, until such enactment is completed; and these defendants aver that, under the Constitution and laws of Virginia, the rate regulation set forth in said order of April 27th, 1907, is not a completed enactment and will not be, unless and until the publication thereof, as directed by said order, is completed, such publication being a part and parcel of the proceedings necessary for the complete enactment of the said rate regulation; therefore, and for these reasons also these defendants are advised and respectfully insist, that this Honorable Court was, and is, without jurisdiction to entertain this suit or to enter any order or decree, or to take any other action herein, except to dismiss the same; and these respondents, therefore, respectfully insist that th-y ought not to be held or required to further answer the same.

Tenth. That the said proceedings before the State Corporation Commission, which culminated in, and included, said order of April 27th, 1907, were and are exactly the same, both as to the tribunal,

and as to the methods and forms involved, as are applicable, under the laws of that State, to all cases of a similar character, and were not different in any respect in the case of the plaintiff herein, than they were, are, and would be, under the laws of Virginia, in the case of any and every other railroad company in the State of Virginia whose rates are sought or attempted to be regulated by law; wherefore, these defendants are advised and respectfully insist that neither in the said proceedings, nor in any of them, was the said plaintiff herein denied the equal protection of the laws.

67 *Eleventh.* That, under the Constitution and laws of Virginia, as set forth in the Exhibits filed with this Answer, the plaintiff herein has a plain, complete, prompt and adequate remedy at law for the matters of which it complains in this Bill, in this, that under the said Constitution and laws, the plaintiff herein is given an appeal as of right from the said order of April 27th, 1907, to the Supreme Court of Appeals of Virginia, and is also given the right to have the operation of said order appealed from suspended, pending the decision of said appeal; and, under the Constitution and laws of the United States, the said plaintiff herein is given the further right of an appeal to the Supreme Court of the United States from any adverse decision of the said Supreme Court of Appeals of Virginia in such matters, upon any question arising under the Constitution and laws of the United States. Therefore, and for this reason also, these defendants are advised and respectfully insist, that this Honorable Court was, and is, without jurisdiction to entertain this suit or to enter any order or decree, or to take any action herein, except to dismiss the same; and these respondents, therefore, respectfully insist that they ought not to be held or required to further answer the same.

Twelfth. That, as will be clearly seen from the constitutional and statutory provisions on the subject hereinbefore set forth and referred to, the State Corporation Commission of Virginia is radically and essentially different, in its character and constitution from the Railroad Commissions (under whatsoever name designated) of any other State in the Union, and from the Interstate Commerce Commission, and therefore the rules and principles of law applicable to injunctions granted by Federal Courts against regulations promulgated by the Railroad Commissions of other States, or to proceedings therein upon regulations prescribed by the Interstate Commerce Commission, can have no proper application to this case. The principal characteristic peculiar to the State Corporation Commission of Virginia is this, that it is, by the Constitution of that State, clothed

68 with all the powers, and endowed with the full nature, of an ordinary judicial court, although it has other powers and functions in addition thereto; it sits in a fixed and public place; it keeps a written public record of its proceedings, which has all the characteristics of a court record; it issues its own writs and processes, and has them served and executed by its own executive process and not otherwise; it can compel the attendance and testifying of witnesses and the production of documents; it can enter no order nor make any valid regulation against a party without first citing it to appear and otherwise proceeding against it by due process of law;

it is expressly given all the powers of a court of record; it can impose fines and render, and enforce by execution, judgments therefor which are recordable, and become liens like judgments of other courts; it can issue and enforce writs of mandamus and injunction; it can punish for contempt; it can enforce its own judgments and orders by its own executive process; and not othe-wise and none of its judgments or orders can be collaterally attacked in any court of said State; from all of its judgments and orders appeals lie to the Supreme Court of Appeals of the State; but to that Court only; writs of mandamus and prohibition may be issued to it by the Supreme Court of Appeals—in short, there is not an essential characteristic of an ordinary judicial court which the State Corporation Commission of Virginia does not possess. Exactly the same due process of law which would be observed, and the same procedure which would be pursued, in an ordinary judicial court of other S-ates, or of the United States, in a suit by an ordinary Railroad Commission, or by the Interstate Commerce Commission, against a railroad company to compel the observance of an *actually promulgated* rate regulation, just *such* process is observed, and just *such* procedure pursued, by the Virginia State Corporation Commission, *in limine*, with reference to a *suggested* rate regulation, in order that its fairness and reasonableness may be judicially tested, while its wisdom and propriety is being legislatively considered, *before* its promulgation and before any injury can be done or penalty incurred, rather
69 than *afterwards*. In such a proceeding, the company has exactly the same rights and protection, and may assert and rely upon exactly the same matters of law and of fact, and upon each and every of them, that it could have asserted or relied upon before an ordinary court in a proceeding taken *after* the promulgation of the rate; and from the decision by the Commission of every *judicial* question involved in such proceeding, an appeal of right may be taken (with supersedeas, if desired) by the company affected, to the Supreme Court of Appeals of the State, and thence, upon any Federal question, to the Supreme Court of the United States. Thus it will be seen that, under the Virginia law, all questions involving the legality of a given rate regulation, are to be tried and judicially determined *before* the rate goes into effect, rather than *afterwards*, and are triable, in the first instance, by a tribunal especially suited for considering and adjudging the reasonableness of rates, the members of which tribunal are experts in such matters, rather than by an ordinary judicial tribunal, whose machinery was not designed for such work, and whose judges and masters in chancery rarely, if ever, have occasion to consider such matters. After this *nisi prius* trial, the proceedings in Virginia are the same as elsewhere, that is to say, that the opportunity for appeal from the decision of such *nisi prius* court, upon any judicial question, to the Supreme Court of the State, and thence, upon any Federal question, to the United States Supreme Court, is, in Virginia, the same as, or rather more liberal than, elsewhere. The *nisi prius* proceedings in Virginia are none the less judicial proceedings because they are conducted before a tribunal especially constituted, and peculiarly fitted, for considering and dis-

posing of such matters—its proceedings partaking, in every particular, of all the essential elements of due process of law.

For all of the foregoing reasons, these defendants are advised and again respectfully insist, that this Honorable Court is without jurisdiction to entertain this suit, or to enter any judgment or order, or to take any other proceedings herein except to dismiss the same;

70 wherefore, these defendants respectfully pray that this suit be dismissed, and that they be allowed to go hence without day, and to recover their costs against the plaintiff herein.

BEVERLEY T. CRUMP,
H. C. STUART,
JOS. E. WILLARD,
By Counsel.
R. T. WILSON.

WILLIAM A. ANDERSON,
A. CAPERTON BRAXTON,
p. d.

71 STATE OF VIRGINIA,
City of Richmond, To-wit:

This day Beverley T. Crump, to me personally known, appeared in person before me, the undersigned, a Notary Public in and for the City aforesaid, in the State of Virginia, and, before me, in my said City, subscribed his name to the foregoing answer, and made oath, then and there, that all of the statements of fact contained in said answer are true, of his own knowledge, except as to those matters therein stated on information and belief, and, as to those matters, he believes them to be true.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal, this, the 20th day of June, 1907.

[NOTARIAL SEAL.] JNO. S. EGGLESTON,
Notary Public.

72 DEFENDANTS' EXHIBIT A.

(Section 19 of Chapter 11 of An Act Concerning Public Service Corporations, Approved January 18th, 1904.)

19. Any person or corporation aggrieved by anything done or omitted in violation of any of the provisions of this act, by any public service corporation chartered or doing business in this State, shall have the right to make complaint of the grievance and seek relief by petition against such public service corporation before the State Corporation Commission, sitting as a court of record. If the grievance complained of be established, the State Corporation Commission, sitting as a court of record, shall have jurisdiction, by injunction, to restrain such public service corporation from continuing the same and to enjoin obedience to the requirements of this act, and the said commission, sitting as a court of record, shall also have jurisdiction, by mandamus, to compel any public service corpora-

tion to observe and perform any public duty imposed upon public service corporations by the laws of this Commonwealth, subject as to any matter arising under this section to the right of appeal to the Supreme Court of Appeals by either party as of right in the mode prescribed by law, but nothing in this section shall be construed to confer any power upon the State Corporation Commission which is forbidden to the courts by section twelve of Chapter four of this act.

COMMONWEALTH OF VIRGINIA:

I, D. Q. Eggleston, Secretary of the Commonwealth of Virginia, and Keeper of the Seals thereof, do hereby certify that the foregoing is a true copy of section nineteen of Chapter II. of an act of the General Assembly of Virginia, entitled "An act concerning Public Service Corporations," approved January 18th, 1904, as the same is published according to law; that said section of said act is still in full force and effect, and has been so continuously since the last-mentioned date.

73 Given under my hand and the Lesser Seal of the Commonwealth, at Richmond, this 25th day of June, in the year of our Lord, nineteen hundred and seven.

[Lesser Seal of the Commonwealth.]

D. Q. EGGLESTON,
Secretary of the Commonwealth and Keeper of the Seals.

74 DEFENDANTS' EXHIBIT B.

AN ACT

To require the State Corporation Commission to fix and prescribe storage, demurrage and car service charges which may be collected by railroad and other transportation companies on freight transported, or to be transported by them, and to be paid by them on freight delayed and cars not promptly furnished or placed by them, with rules and regulations governing same.

Approved May 16, 1903.

1. Be it enacted by the general assembly of Virginia, That from and after the passage of this act power is hereby conferred on the State Corporation Commission of the State of Virginia, and it is required to fix and prescribe a schedule of rates for storage of freight in depots and for demurrage or car service on freight in carload lots, to be charged by railroad and other transportation companies doing business in this State, and to fix the time after the reception of freight at destination at which such charges of storage, demurrage, or car service shall begin, with power to vary the same according to the value and character of the freight stored, the nature of the place of destination, the residence of the consignee, and such other facts as, in its judgment, should be considered in fixing the same.

2. That the State Corporation Commission shall fix and prescribe a schedule of detention charges to be paid by railroad and other transportation companies to the consignee in case of delay in the delivery of freight in carloads or less at destination, or where shipments are held an unreasonable length of time at the station or siding at which they originate, or at any intermediate point, and for carrying freights, express packages, and all other effects by and beyond the place of final destination, without authority from the consignee; and the commission shall also fix and prescribe rules and regula-
75 tions covering the placing of empty cars and a schedule of detention charges to be paid by railroad companies to consignors when cars are not placed for loading in accordance with said rules and regulations after application has been made therefor, when said charges shall, when paid, be in full of any and all claims for damages growing out of such failure: provided, however, that the owner of the freight may, at his election, waive said charges and elect to claim such actual damage as he may have sustained instead of such charges.

3. This act shall be in force from its passage.

COMMONWEALTH OF VIRGINIA:

I, D. Q. Eggleston, Secretary of the Commonwealth of Virginia, and Keeper of the Seals thereof, do hereby certify that the foregoing is a true copy of an act of the General Assembly of Virginia, bearing the title set forth in the caption to the foregoing copy,—approved May 16, 1903,—as the same is published according to law; that said act is still in full force and effect, and has been so continuously since the last-mentioned date.

Given under my hand and the Lesser Seal of the Commonwealth, at Richmond, this 25th day of June, in the year of our Lord, nineteen hundred and seven.

[Lesser Seal of the Commonwealth.]

D. Q. EGGLESTON,
Secretary of the Commonwealth and Keeper of the Seals.

76 DEFENDANTS' EXHIBIT NO. 1.

(Sections 155 and 156, Virginia Constitution.)

SEC. 155. A permanent commission, to consist of three members, is hereby created, which shall be known as the State Corporation Commission. The commissioners shall be appointed by the Governor, subject to confirmation by the General Assembly in joint session, and their regular terms of office shall be six years, respectively, except those first appointed under this Constitution, of whom, one shall be appointed to hold office until the first day of February, nineteen hundred and four, one, until the first day of February, nineteen hundred and six, and one, until the first day of February, nineteen hundred and eight. Whenever a vacancy in the commission shall occur, the Governor shall forthwith appoint a qualified person to fill

the same for the unexpired term, subject to confirmation by the General Assembly as aforesaid. Commissioners appointed for regular terms shall, at the beginning of the terms for which appointed, and those appointed to fill vacancies shall, immediately upon their appointments, enter upon the duties of their office; but no person so appointed, either for a regular term, or to fill a vacancy, shall enter upon, or continue in, office after the General Assembly shall have refused to confirm his appointment, or adjourned *sine die* without confirming the same, nor shall he be eligible for re-appointment to fill the vacancy caused by such refusal or failure to confirm. No person while employed by, or holding any office in relation to, any transportation or transmission company, or while in any wise financially interested therein, or while engaged in practicing law, shall hold office as a member of said commission, or perform any of the duties thereof. At least one of the commissioners shall have the qualifications prescribed for judges of the Supreme Court of Appeals; and any commissioner may be impeached or removed in the manner provided for the impeachment or removal of a judge of said court.

The commission shall annually elect one of their members
77 chairman of the same, and shall have one clerk, one bailiff and such other clerks, officers, assistants and subordinates as may be provided by law, all of whom shall be appointed, and subject to removal, by the commission. It shall prescribe its own rules of order and procedure, except so far as the same are specified in this Constitution or any amendment thereof. The General Assembly may establish within the department, and subject to the supervision and control, of the commission, subordinate divisions, or bureaus, of insurance, banking or other special branches of the business of that department. All sessions of the commission shall be public, and a permanent record shall be kept of all its judgments, rules, orders, findings and decisions, and of all reports made to, or by, it. Two of the commissioners shall constitute a quorum for the transaction of business, whether there be a vacancy in the commission or not. The commission shall keep its office open for business on every day except Sundays and legal holidays. Transportation companies shall at all times transport, free of charge, within this State, the members of said commission and its officers, or any of them, when engaged on their official duties. The General Assembly shall provide suitable quarters for the commission and funds for its lawful expenses, including pay for witnesses summoned, and costs of executing processes issued, by the commission of its own motion; and shall fix the salaries of the members, clerks, assistants and subordinates of the commission and provide for the payment thereof; but the salary of each commissioner shall not be less than four thousand dollars per annum. After the first day of January, nineteen hundred and eight, the General Assembly may provide for the election of the members of the commission by the qualified voters of the State; in which event, vacancies thereafter occurring shall be filled as hereinbefore provided, until the expiration of twenty days after the next general election, held not less than sixty days after the vacancy occurs, at which election the vacancy shall be filled for the residue of the unexpired term.

SEC. 156. (*a*) Subject to the provisions of this Constitution and

to such requirements, rules and regulations as may be pre-
78 scribed by law, the State Corporation Commission shall be the department of government through which shall be issued all charters and amendments or extensions thereof, for domestic corporations, and all licenses to do business in this State to foreign corporations; and through which shall be carried out all the provisions of this Constitution, and of the laws made in pursuance thereof, for the creation, visitation, supervision, regulation and control of corporations chartered by, or doing business in, this State. The commission shall prescribe the forms of all reports which may be required of such corporations by this Constitution or by law; it shall collect, receive, and preserve such reports, and annually tabulate and publish them in statistical form; it shall have all the rights and powers of, and perform all the duties devolving upon, the Railroad Commissioner and the Board of Public Works, at the time this Constitution goes into effect, except so far as they are inconsistent with this Constitution, or may be hereafter abolished or changed by law.

(*b*) The commission shall have the power, and be charged with the duty, of supervising, regulating and controlling all transportation and transmission companies doing business in this State, in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses therein by such companies; and to that end the commission shall, from time to time, prescribe, and enforce against such companies, in the manner hereinafter authorized, such rates, charges, classifications of traffic, and rules and regulations, and shall require them to establish and maintain all such public service, facilities and conveniences, as may be reasonable and just, which said rates, charges, classifications, rules, regulations and requirements, the commission may, from time to time, alter or amend. All rates, charges, classifications, rules and regulations adopted, or acted upon, by any such company, inconsistent with those prescribed by the commission, within the scope of its authority, shall be unlawful and void. The commission shall also have the right at all times to inspect the books and papers of all transportation and transmission companies doing business in
79 this State, and to require from such companies, from time to time, special reports and statements under oath, concerning their business; it shall keep itself fully informed of the physical condition of all the railroads of the State, as to the manner in which they are operated, with reference to the security and accommodation of the public, and shall, from time to time, make and enforce such requirements, rules and regulations as may be necessary to prevent unjust or unreasonable discriminations by any transportation or transmission company in favor of, or against, any person, locality, community, connecting line, or kind of traffic, in the matter of car service, train or boat schedule, efficiency of transportation or otherwise, in connection with the public duties of such company. Before the commission shall prescribe or fix any rate, charge, or classification of traffic, and before it shall make any order, rule, regulation or requirement directed against any one or more companies by name, the company or companies to be affected by such rate, charge, classification, order, rule, regulation or requirement, shall first be given,

by the commission, at least ten days' notice of the time and place, when and where the contemplated action in the premises will be considered and disposed of, and shall be afforded a reasonable opportunity to introduce evidence and to be heard thereon, to the end that justice may be done, and shall have process to enforce the attendance of witnesses; and before the commission shall make or prescribe any general order, rule, regulation or requirement, not directed against any specific company or companies by name, the contemplated general order, rule, regulation or requirement shall first be published in substance, not less than once a week for four consecutive weeks in one or more of the newspapers of general circulation published in the city of Richmond, Virginia, together with notice of the time and place when and where the commission will hear any objections which may be urged by any person interested, against the proposed order, rule, regulation or requirement; and every such general order, rule, regulation or requirement, made by the commission shall be published at length, for the time and
80 in the manner above specified, before it shall go into effect, and shall also, as long as it remains in force, be published in each subsequent annual report of the commission. The authority of the commission (subject to review on appeal as hereinafter provided) to prescribe rates, charges and classifications of traffic, for transportation and transmission companies, shall be paramount; but its authority to prescribe any other rules, regulations or requirements for corporations or other persons shall be subject to the superior authority of the General Assembly to legislate thereon by general laws: provided, however, that nothing in this section shall impair the right which has heretofore been, or may hereafter be, conferred by law upon the authorities of any city, town or county to prescribe rules, regulations or rates of charge to be observed by any public service corporation in connection with any services performed by it under a municipal or county franchise granted by such city, town or county, so far as such services may be wholly within the limits of the city, town or county granting the franchise. Upon the request of the parties interested, it shall be the duty of the commission, as far as possible, to effect, by mediation, the adjustment of claims, and the settlement of controversies, between transportation or transmission companies and their patrons.

(*c*) In all matters pertaining to the public visitation, regulation or control of corporations, and within the jurisdiction of the commission, it shall have the powers and authority of a court of record, to administer oaths, to compel the attendance of witnesses and the production of papers, to punish for contempt any person guilty of disrespectful or disorderly conduct in the presence of the commission while in session, and to enforce compliance with any of its lawful orders or requirements by adjudging, and enforcing by its own appropriate process, against the delinquent or offending company (after it shall have been first duly cited, proceeded against by due process of law before the commission sitting as a court, and afforded opportunity to introduce evidence and to be heard, as well against the validity, justness or reasonableness of the order or re-
81 quirement alleged to have been violated, as against the liability of the company for the alleged violation), such fines or

other penalties as may be prescribed or authorized by this Constitution or by law. The commission may be vested with such additional powers, and charged with such other duties (not inconsistent with this Constitution) as may be prescribed by law, in connection with the visitation, regulation or control of corporations, or with the prescribing and enforcing of rates and charges to be observed in the conduct of any business where the State has the right to prescribe the rates and charges in connection therewith, or with the assessment of the property of corporations, or the appraisement of their franchises, for taxation, or with the investigation of the subject of taxation generally. Any corporation failing or refusing to obey any valid order or requirement of the commission, within such reasonable time, not less than ten days, as shall be fixed in the order, may be fined by the commission (proceeding by due process of law as aforesaid) such sum, not exceeding five hundred dollars, as the commission may deem proper, or such sum, in excess of five hundred dollars, as may be prescribed, or authorized, by law; and each day's continuance of such failure or refusal, after due service upon such corporation of the order or requirement of the commission, shall be a separate offence: provided, that should the operation of such order or requirement be suspended pending an appeal therefrom, the period of such suspension shall not be computed against the company in the matter of its liabilities to fines or penalties.

(*d*) From any action of the commission prescribing rates, charges of classifications of traffic, or affecting the train schedule of any transportation company, or requiring additional facilities, conveniences or public service of any transportation or transmission company, or refusing to approve a suspending bond, or requiring additional security thereon or an increase thereof, as provided for in subsection (*c*) of this section, an appeal (subject to such reasonable limitations as to time, regulations as to procedure and provisions as to costs, as may be prescribed by law) may be taken by the corporation whose rates, charges or classifications of traffic, schedule, facilities, conveniences or service, are affected, or by any person deeming himself aggrieved by such action or (if allowed by law) by the Commonwealth. Until otherwise provided by law, such appeal shall be taken in the manner in which appeals may be taken to the Supreme Court of Appeals from the inferior courts, except that such an appeal shall be of right, and the Supreme Court of Appeals may provide by rule for proceedings in the matter of appeals in any particular in which the existing rules of law are inapplicable. If such appeal be taken by the corporation whose rates, charges or classifications of traffic, schedules, facilities, conveniences or service are affected, the Commonwealth shall be made the appellee; but, in the other cases mentioned, the corporation so affected shall be made the appellee. The General Assembly may also, by general laws, provide for appeals from any other action of the commission, by the Commonwealth or by any person interested, irrespective of the amount involved. All appeals from the commission shall be to the Supreme Court of Appeals only; and in all appeals to which the Commonwealth is a party, it shall be represented by the Attorney-General or his legally appointed representative.

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No court of this Commonwealth (except the Supreme Court of Appeals, by way of appeals as herein authorized), shall have jurisdiction to review, reverse, correct or annul any action of the commission, within the scope of its authority, or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the commission in the performance of its official duties; provided, however, that the writs of *mandamus* and prohibition shall lie from the Supreme Court of Appeals to the commission in all cases where such writs, respectively, would lie to any inferior tribunal or officer.

(*e*) Upon the granting of an appeal, a writ of *supersedeas* may be awarded by the appellate court, suspending the operation of the action appealed from until the final disposition of the appeal; but, prior to the final reversal thereof by the appellate court, no action of the commission prescribing or affecting rates, charges or classifications of traffic of any transportation or transmission com-
83 pany shall be delayed, or suspended, in its operation, by reason of any appeal by such corporation, or by reason of any proceedings resulting from such appeal, until a suspending bond shall first have been executed and filed with, and approved by, the commission (or approved on review by the Supreme Court of Appeals), payable to the Commonwealth, and sufficient in amount and security to insure the prompt refunding, by the appealing corporation to the parties entitled thereto, of all charges which such company may collect or receive, pending the appeal, in excess of those fixed, or authorized, by the final decision of the court on appeal. The commission, upon the execution of such bond, shall forthwith require the appealing company, under penalty of the immediate enforcement (pending the appeal and notwithstanding any *supersedeas*), of the order or requirement appealed from, to keep such accounts, and to make to the commission, from time to time, such reports, verified by oath, as may, in the judgment of the commission, suffice to show the amounts being charged or received by the company, pending the appeal, in excess of the charge allowed by the action of the commission appealed from, together with the names and addresses of the persons to whom such overcharges will be refundable in case the charges made by the company pending the appeal be not sustained on such appeal; and the commission shall also, from time to time, require such company, under like penalty, to give additional security on, or to increase, the said suspending bond, whenever, in the opinion of the commission, the same may be necessary to insure the prompt refunding of the overcharges aforesaid. Upon the final decision of such appeal, all amounts which the appealing company may have collected, pending the appeal in excess of that authorized by such final decision, shall be promptly refunded by the company to the parties entitled thereto, in such manner, and through such methods of distribution, as may be prescribed by the commission, or by law. All such appeals affecting rates, charges of classifications of traffic, shall have precedence upon the docket of the appellate court, and shall be heard and disposed of

promptly by the court, irrespective of its place of session,
84 next after the *habeas corpus*, and Commonwealth's, cases already on the docket of the court.

(*f*) In no case of appeal from the commission shall any new or additional evidence be introduced in the appellate court; but the chairman of the commission, under the seal of the commission, shall certify to the appellate court all the facts upon which the action appealed from was based and which may be essential for the proper decision of the appeal, together with such of the evidence introduced before, or considered by, the commission as may be selected, specified and required to be certified, by any party in interest, as well as such other evidence, so introduced or considered, as the commission may deem proper to certify. The commission shall, whenever an appeal is taken therefrom, file with the record of the case, and as a part thereof, a written statement of the reasons upon which the action appealed from was based, and such statement shall be read and considered by the appellate court, upon disposing of the appeal. The appellate court shall have jurisdiction, on such appeal, to consider and determine the reasonableness and justness of the action of the commission appealed from as well as any other matter arising under such appeal: provided, however, that the action of the commission appealed from shall be regarded as *prima facie* just, reasonable and correct; but the court may, when it deems necessary, in the interest of justice, remand to the commission any case pending on appeal, and require the same to be further investigated by the commission, and reported upon to the court (together with a certificate of such additional evidence as may be tendered before the commission by any party in interest), before the appeal is finally decided.

(*g*) Whenever the court, upon appeal, shall reverse an order of the commission affecting the rates, charges or the classification of traffic of any transportation or transmission company, it shall, at the same time, substitute therefor such order as, in its opinion, the commission should have made at the time of entering the order appealed from; otherwise, the reversal order shall not be valid.
85 Such substituted order shall have the same force and effect (and none other) as if it had been entered by the commission at the time the original order appealed from was entered. The right of the commission to prescribe and enforce rates, charges, classifications, rules and regulations, affecting any or all actions of the commission theretofore entered by it and appealed from, but based upon circumstances or conditions different from those existing at the time the order appealed from was made, shall not be suspended or impaired by reason of the pendency of such appeal; but no order of the commission, prescribing or altering such rates, charges, classifications, rules or regulations, shall be retroactive.

(*h*) The right of any person to institute and prosecute in the ordinary courts of justice, any action, suit or motion against any transportation or transmission company, for a claim or cause of action against such company, shall not be extinguished or impaired, by reason of any fine or other penalty which the commission may

impose, or be authorized to impose, upon such company because of its breach of any public duty, or because of its failure to comply with any order or requirement of the commission; but, in no such proceeding by any person against such corporation, nor in any collateral proceeding, shall the reasonableness, justness or validity of any rate, charge, classification of traffic, rule, regulation or requirement, theretofore prescribed by the commission, within the scope of its authority, and then in force, be questioned: provided, however, that no case based upon or involving any order of the commission shall be heard, or disposed of, against the objection of either party, so long as such order is suspended in its operation by an order of the Supreme Court of Appeals as authorized by this Constitution or by any law passed in pursuance thereof.

(*j*) The commission shall make annual reports to the Governor of its proceedings, in which reports it shall recommend, from time to time, such new or additional legislation in reference to its powers or duties, or to the creation, supervision, regulation or control
86 of corporations, or to the subject of taxation, as it may deem wise or expedient, or as may be required by law.

(*k*) Upon the organization of the State Corporation Commission, the Board of Public Works and the office of Railroad Commissioner, shall cease to exist; and all books, papers and documents pertaining thereto, shall be transferred to, and become a part of the records of, the office of the State Corporation Commission.

(*l*) After the first day of January, nineteen hundred and five, in addition to the modes of amendment provided for in Article Fifteen of this Constitution, the General Assembly, upon the recommendation of the State Corporation Commission, may, by law, from time to time, amend subsections *a* to *i*, inclusive, of this section, or any of them, or any such amendment thereof: provided, that no amendment made under authority of this sub-section shall contravene the provisions of any part of this Constitution other than the sub-sections last above referred to or any such amendment thereof.

COMMONWEALTH OF VIRGINIA:

I, D. Q. Eggleston, Secretary of the Commonwealth of Virginia and Keeper of the Seals thereof, do hereby certify that the foregoing is a true copy of sections one hundred and fifty-five and one hundred and fifty-six of the Constitution of Virginia, the original of which, by law, is in my custody; that said two sections are still in full force and effect, and have been so continuously since prior to January 1st, 1904.

Given under my hand and the Lesser Seal of the Commonwealth, at Richmond, this 25th day of June, in the year of our Lord, nineteen hundred and seven.

[Lesser Seal of the Commonwealth.]

D. Q. EGGLESTON,

Secretary of the Commonwealth and Keeper of the Seals.

87 DEFENDANTS' EXHIBIT NO. 2.

AN ACT

To put into effective operation the provisions of the constitution relating to the creation, appointment and organization of the "State Corporation Commission," its jurisdiction, powers, functions, and duties; the qualifications of the members and officers thereof, their appointment and salaries; the location of its offices, and places and times of its public sessions; its writs, processes, orders, findings and judgments; appeals from its orders, findings and judgments, and its expenses, etc.

Approved April 15, 1903.

Be it enacted by the General Assembly of Virginia as follows:

1. That as used in this act the term "corporation" or "company" shall include all corporations chartered by the acts of the General Assembly of Virginia, or under the general incorporation laws of this State, or doing business therein, and all trusts, associations, and joint-stock companies, having any powers or privileges not possessed by individuals or unlimited partnerships, and shall exclude all municipal corporations and public institutions owned or controlled by the State; the term "charter" shall be construed to mean a charter of incorporation by or under which any such corporation is formed; the term "transportation company" shall include any company, trustee, or other person owning, leasing, or operating for hire, a railroad, street railway, canal, steamboat, or steamship lines, also any freight-car company, car association or car trust, express company, or company, trustee, or person in any way engaged in business as a common carrier over a route acquired, in whole or in part, under the right of eminent domain; the term "transmission company" shall include any company owning, leasing, or operating for hire, any telegraph or telephone line; the term "public service cor-
88 poration" shall include all transportation and transmission companies, all gas, electric light, heat, and power companies, and all persons authorized to exercise the right of eminent domain, or to use or occupy any street, alley, or public highway, whether along, over, or under the same, in a manner not permitted to the general public; the term "person" as used in this act shall include individuals, partnerships, and corporations, in the singular as well as in the plural number; the term "the commission" shall be construed to mean the "State Corporation Commission," and the word "officers," when used in connection with said commission, shall be construed to mean any clerk, bailiff, assistant, or other appointee of the State Corporation Commission.

Appointment of Members of Corporation Commission; Terms; Commission.

2. That the governor shall, at least fifteen days before the first day of February, nineteen hundred and four, and at least fifteen

days before the first day of February in each alternate year thereafter, appoint, subject to the confirmation of the General Assembly, in joint session, a citizen of this State, possessing the qualifications prescribed by the Constitution and by law to be a member of the "State Corporation Commission" (which shall be composed of three members), and whose term of office shall be that prescribed by the Constitution, and shall begin on the first day of February next succeeding his appointment and confirmation, except in the case of an appointee to fill a vacancy, or where the General Assembly fails to confirm an appointee to a full term of office before the date fixed by law for the commencement of his said term of office; in either case the term of office of any such appointee shall begin from the date of his qualification, and shall be for the unexpired portion of the term of office to which he shall be so appointed and confirmed. The members of the commission first appointed and confirmed, and those hereafter appointed and confirmed, shall hold office for the
89 respective terms for which they have been, or may hereafter be, appointed, and until their respective successors in office have been appointed, confirmed, and qualified, unless they shall sooner be removed from office as prescribed by the Constitution or by law. The governor shall commission each of the members of the commission, and said commission shall be filed by the members in the office of the clerk of the commission.

Who Eligible to Serve as a Member of the Commission; Qualifications, etc.

3. That no person shall be eligible to serve as a member of the State Corporation Commission who, on the date of the commencement of his term of office, shall be employed by or hold any office in relation to any transportation or transmission company, or is in any way financially interested therein, or is engaged in the practice of law; nor shall any person be eligible to appointment as a member of the commission unless at the time of his appointment he is a qualified voter under the Constitution and laws of this State. One of the commissioners shall have the qualifications prescribed for judges of the supreme court of appeals.

Oath of Office.

4. That the members of the commission and the officers thereof, for whose appointment provision is made either by the Constitution or by law, before entering upon the discharge of the duties of their respective offices, shall, in addition to the oath prescribed by section thirty-four of the Constitution, severally take and subscribe the following oath, to-wit:

"I, —— ——, do solemnly swear (or affirm) that at the present time I am not employed by, and do not hold any office in relation to, any transportation or transmission company, and have not in any wise any financial interest in any such company, and am not engaged in the practice of law, and that during the term of my office as — I will not either, directly or indirectly, be employed by
90 or hold any office in relation to any transportation or transmission company, or in any wise be financially interested in

any such company, or be engaged in the practice of law, so help me God."

But the said additional oath shall be taken and subscribed by the first members of the commission and by the officers thereof as soon as practicable after the passage of this act.

The oaths prescribed by the Constitution and this act may be taken and subscribed before any officer authorized by the laws of this State to administer oaths, and shall be certified by such officer and recorded on the minutes of the proceedings of the commission, and then returned by its clerk as required by law as to the oaths of other State officers.

Offices of Commission to be Located in the City of Richmond; Where Notice, Writ or Process to be Returnable; When Public Sessions May be Held Elsewhere.

5. That the offices of the commission shall be located, and its public sessions, held, in the city of Richmond, and all notices, writs, and processes issued by the commission shall be made returnable to, and command the corporation or person against whom directed to appear before the commission and answer on a certain day to be named therein: provided, however, the commission may in its discretion, if public necessity or the convenience of the parties require, hold public sessions elsewhere in the State, and may order any notice, writ, or process to be made returnable to the place of any such session; and for the holding of any such session the commission may occupy the court-room of the court-house of the city or county wherein such session may be held if said court-room shall not at the time be in use for the sessions of the court of any such city or county.

Offices.

6. That the rooms in the State library building now occupied as offices by the railroad commissioner shall be the offices of the
91 commission, its clerk, bailiff, assistants, and subordinates until otherwise provided by law, and the register of the land office is hereby directed to have the said rooms fitted up in a suitable manner for the use and occupation of the commission and its officers. And the sum of five hundred dollars, or so much thereof as may be necessary, is hereby appropriated for that purpose out of any moneys in the treasury not otherwise appropriated.

Clerk, Assistant Clerk, Bailiff, Stenographer, &c., Qualifications and Terms.

7. That the commission shall have a clerk, a first assistant clerk, a bailiff, and a stenographer (who shall also be a typewriter), each of whom shall have the qualifications for office, be clothed with the power, discharge the functions and perform all the duties hereinafter prescribed, and such other duties as may be prescribed or required by the commission, and all of whom shall be appointed by the commission, and whose respective terms of office shall be as pre-

scribed by the commission, and they shall be subject to removal by the commission as hereinafter in this act provided. The officers so appointed shall hold office until their successors have been appointed, qualified, and given bond as required by law, unless they shall sooner be removed from office, as hereinafter provided.

Officers to be Residents of the State and Qualified Voters.

8. That the officers of the commission shall at the time of their appointment be actual residents of this State, and qualified voters therein, under the Constitution and laws thereof.

The First Members of the Commission to Meet, Organize, Appoint Clerical Force, &c.; When the Commission to be Vested With Powers and Function of Office.

9. That the persons appointed, confirmed, and commissioned to be the first members of the commission under the provisions of
92 section one hundred and fifty-five of the Constitution shall, as soon as practicable, meet in the office now used by the railroad commissioner and organize by taking and subscribing the oaths of office prescribed by the Constitution and by this act, and elect one of their number as chairman of the commission, appoint a clerk, a first assistant clerk, a bailiff, and a stenographer; and when organized the commission shall have all the powers, discharge all the functions, and perform all the duties prescribed by the Constitution and by law.

When the Office to Become Vacant; How Vacancies Filled.

10. That if any person heretofore or hereafter appointed and confirmed to be a member of the commission, or if any person appointed an officer of the commission, shall fail to qualify as required by the Constitution or by law, or to give any bond required by law of any such officer within thirty days after the date fixed by the Constitution or by law, as the commencement of the term of office to which he shall be appointed, then such office shall because of such failure to qualify, or to give any required bond within the time aforesaid, become vacant, and such vacancy shall, in the case of members of the commission, be filled as prescribed by section one hundred and fifty-five of the Constitution, and in the case of officers and appointees of the commission, be filled by appointment of the commission.

Duties of Clerk; Records; Certified Copies Same Legal Effect.

11. That the clerk of the commission shall keep a minute book in which shall be recorded all the proceedings, orders, findings, and judgments of the public sessions of the commission, and the minutes of the proceedings of each day's public session shall be read and approved by the commission and signed by its chairman, or acting chairman; he shall, subject to the supervision and control of the commission, have custody of and preserve all of the records, documents, papers, and files of the commission, or which may be filed

before it in any complaint, proceeding, contest or controversy,
93 and said records, documents, papers, and files shall be open to public examination in the office of said clerk to the same extent as the records and files of the courts of this Commonwealth; he shall, when requested, make and certify copies from any record, document, paper, or file in his office, and if required, affix the seal of the commission thereto, and except when made at the instance of the commission or on behalf of the Commonwealth, he shall charge and collect the same fees as are fixed by law for like services rendered by the clerks of the courts of this Commonwealth, and any such copy, so certified, shall have the same faith, credit, and legal effect as copies made and certified by the clerks of the courts of this Commonwealth from the records and files thereof; he shall certify all allowances made by the commission to be paid out of the public treasury for witness fees, service of process, or other expenses; issue all notices, writs, processes or orders awarded by the commission; or authorized by law, or by the rules of the commission; he shall receive all fines and penalties imposed by the commission, all moneys collected on judgments, all registration fees required by law to be paid by corporations, all fees collected by any officer of the commission, and the tax on the seal of the commission, and shall keep an accurate account of the same and what disposition has been made thereof, together with all fees collected by him for services rendered, either by him or his assistants, and shall, at least once in every thirty days during his term of office, render a statement of all such receipts and collections to the auditor of public accounts, and pay the same into the treasury of the Commonwealth, and shall keep all such other accounts of such collections and disbursements, and shall make all such other reports thereof as may be required by law or by the regulations prescribed by the auditor of public accounts; and generally shall have the powers, discharge the functions, and perform the duties of a clerk of a court of record in all matters within the jurisdiction of the commission.

94 Duties and Powers of First Assistant Clerk.

12. That the first assistant clerk of the commission shall have the powers, discharge the functions, and perform the duties in all matters within the jurisdiction of the commission of a deputy clerk of a court of record, and shall perform as well the duties of the clerk of the commission during the absence of said clerk, and in case of the death, resignation, incapacity, or removal from office of the clerk, he shall be the acting clerk of the commission until the vacancy in the office of clerk shall be filled.

Duties and Powers of the Bailiff.

13. That the bailiff of the commission shall, in all matters within the jurisdiction of the commission, have the powers, discharge the functions, and perform the duties of a sheriff or sergeant under the law; he shall preserve order during the public sessions of the commission, and may make arrests and serve and make return on any writ or process awarded by the commission, and execute any writ,

order, or process of execution awarded upon the findings or judgments of the commission in any matter within its jurisdiction.

Duties of the Stenographer, &c.

14. The stenographer and other assistants and subordinates of the commission shall perform the duties required of them by law or by the commission, under its rules, regulations, and requirements.

The Commission to Require Its Officers to Enter into Bond; Amount, Conditions, and Recordation of Same.

15. The commission shall require its clerk, first assistant clerk, and bailiff, before entering upon the discharge of the duties of their respective offices, each to enter into bond, with surety to be approved by the commission, in such penalty as the commission may deem sufficient (not in any case less than five thousand dollars), conditioned for the faithful performance of the duties of their respective offices, and for the prompt and full accounting for and payment into the treasury of all moneys received by them, respectively, as officers of the commission. The said bonds shall be made payable to the Commonwealth, and may be proceeded on and enforced in any circuit or corporation court in like manner as the official bonds of other officers of this Commonwealth, or of its courts. Said bonds shall be recorded in the record of the proceedings of the commission, and the original bonds transmitted by its clerk to the auditor of public accounts, who shall file and preserve the same in his office.

Powers of the Commission.

16. The commission shall have power and authority to require, by its rules, regulations, and requirements, all corporations chartered under the laws of this State, and all foreign corporations, doing business in this State, to perform and discharge any public duty or requirement imposed upon such corporations by the Constitution, or by law, and may require all such corporations to furnish such reports to the commission as may be provided by the Constitution, or by law, and the commission may enforce against any such corporation, by its judgments and processes, any fine or other penalty imposed by law for the failure of any such corporation to perform any public duty required of it, or to comply with any requirement of law, or any lawful regulation of the commission in reference to the same. The commission may require the establishment by transportation companies of separate waiting rooms at all stations, wharves, or landings for the white and colored races.

Duties of the Commission with Respect to Transportation Companies, &c.

17. It shall be the duty of the commission to make inquiry and examination from time to time into the acts and proceedings of railroad, canal, steamboat, steamship, or other transportation companies, and other chartered common carriers and transmission companies,

doing business in this State, their officers and agents, for the purpose of ascertaining whether anything has been done or omitted in violation or contravention of their charters, or of the law.

The Commission to Examine all Railroads, &c.

18. The commission shall examine all the railroads and the works and equipment thereof, and the works and equipment of all other transportation companies, and keep itself informed as to their physical condition and the manner in which they are operating with reference to the security and accommodation of the public, and the compliance of the several companies with the provisions of their charters and the laws of the Commonwealth. And the provisions of this section shall apply to all railroads and other transportation companies, and to the corporations, trustees, receivers, or other person owning or operating the same.

The Commission to give Notice to Transportation or Transmission Company of Violation of Law, and Compel Compliance with Same.

19. Whenever, in the judgment of the commission, it shall appear that any transportation or transmission company has violated any law of this State, or has neglected in any respect or particular to comply with the terms of its charter, or with the provision of any of the laws of the Commonwealth, it shall give notice thereof in writing to such company or the person operating the same; and if the violation or neglect be continued after such notice, the commis-
97 sion shall take such proceedings and impose such fines or penalties within its jurisdiction as shall be necessary to compel such transportation or transmission company to comply with the terms of its charter and the provisions of the laws of the Commonwealth.

The Commission to Compel Railroad to Make Repairs When Necessary; Notice; Railroad May be Heard Thereon; Penalty.

20. Whenever in the judgment of the commission it shall appear that repairs are necessary upon any railroad, or that any addition to its rolling stock, or addition or improvement in the equipment of any other transportation line, or any enlargement of or improvement in the stations or station houses, waiting rooms, wharves or landings, or any change in the mode of operating the road, or other transportation line, and conducting its business, is reasonable and expedient in order to promote the security and accommodation of the public, it shall give ten days' notice in writing to the company or person operating the road, or other transportation line, of the improvements and changes which it adjudges to be proper, designating when and where the contemplated action in the premises will be considered and disposed of, and such company or person shall be afforded a reasonable opportunity to introduce witnesses and to be heard thereon, and any such company or person failing or refusing to obey any valid order or requirement of the commission in the prem-

ises within such reasonable time, not less than ten days, as shall be fixed in the order of the commission, it may impose upon any such company or person the fines and penalties prescribed by the Constitution and by law for its or his failure to obey the orders and requirements of the commission and the requirements of the law, and enforce the payment and collection thereof by its judgments and processes.

When Commission to Make an Examination of Road; Notice; Fines; How Same May be Enforced.

21. Upon the complaint and application of the mayor or
98 counsel of any city or town, or the board of supervisors of any county within which any part of any transportation or transmission line is located, it shall be the duty of the commission to make an examination of the physical condition and operation thereof. Before proceeding to make such examination in accordance with such application, the commission shall give to the applicants and the corporation or person operating any such line reasonable notice in writing, of the time and place of entering upon the same. If upon such examination it shall appear to the commission that the complaint alleged by the applicant is well founded, it shall so adjudge and shall notify such corporation or person of its adjudication; and if such corporation or person fail for sixty days after such notification to remove the cause of complaint, the commission shall impose the fines and penalties provided by the Constitution and by law for its failure to obey the orders and requirements of the commission, and enforce the collection thereof by its judgments and processes.

Commonwealth to be Complainant, &c.

22. That in all complaints, proceedings, contests, or controversies by or before the commission, whether instituted by the Commonwealth or by the commission of its own motion, the Commonwealth shall be complainant, and the party against whom the complaint is preferred, or the proceeding instituted, shall be the defendant. Any party complainant or defendant in any complaint, proceeding, contest or controversy shall be entitled to process, to convene parties, compel the attendance of witnesses, or the production of books and papers, in any proceeding or hearing before the commission.

Proceedings to be as in Courts of Record.

23. That the commission, on hearing of all complaints, proceedings, contests, or controversies, in which it shall be called upon to decide or render judgment in its capacity as a court of record,
99 shall observe and administer the common and statute law rules of evidence as observed and administered by the courts of this Commonwealth, in like manner as complainants and defendants in the courts of this Commonwealth.

Perjury.

24. That any person who shall wilfully swear falsely touching any material fact or matter in any complaint, proceeding, investigation, contest or controversy instituted or pending before the commission shall be deemed guilty of perjury.

The Commission to Cause its Rules of Procedure, &c., to be Entered of Record and Printed; Distribution of Copies.

25. That the commission shall cause its rules of order and procedure to be entered upon the records of its proceedings and to be printed, as well as all amendments and additions to the same, and shall furnish copies thereof to county and city clerks and to any citizen of this State upon application therefor.

The Commission to Summon Party Before Imposing Fine or Penalty; Contempts; Notice to be Given as to Rules or Orders Directed Against One or More Companies; General Order, Rule, &c., to be Published; Suspension of Order During Appeal; Penalties.

26. That the commission, before entering any judgment for any fine or penalty imposed by law shall summon or rule the party upon whom such fine or penalty is sought to be imposed to appear before the commission at some public session to be designated in the process, to show cause against such fine or penalty, and why the same should not be imposed and judgment rendered therefor: provided, that the provisions of this section shall not apply to contempts committed in the presence of the commission while in public session; and before the commission shall make any order, rule, regulation, or requirement directed against any one or more companies by name, the company or companies to be affected by such order, rule, regulation, or requirement shall first be given by the commission at least ten days' notice of the time and place when and where the contemplated action of the commission in the premises will be considered and disposed of, and shall be afforded a reasonable opportunity to introduce evidence and to be heard thereon, to the end that justice may be done; and before the commission shall make or prescribe any general order, rule, regulation, or requirement, not directed against any specific company or companies by name, the contemplated general order, rule, regulation, or requirement shall first be published in substance, not less than once a week for four consecutive weeks, in one or more newspapers of general circulation published in the city of Richmond, Virginia, together with notice of the time and place when and where the commission will hear any objections which may be urged by any person interested, against the proposed order, rule, regulation, or requirement; and every such general order, rule, regulation, or requirement made by the commission shall be published at length for the time and in the manner above specified before it shall go into effect, and shall also, as long as it remains in effect, be published in each subsequent report of the commission. Any corporation failing or refusing to obey any valid order or requirement of the commission within such reasonable time,

not less than ten days, as shall be fixed in the order, may be fined by the commission such sum, not exceeding five hundred dollars, as the commission may deem proper, or in such sum in excess of five hundred dollars as may be prescribed or authorized by law; and each day's continuance of such failure or refusal after due service upon such corporation of the order or requirement of the commission shall be a separate offense: provided, that should the operation of such order or requirement be suspended pending an appeal therefrom, the period of such suspension shall not be computed
101 against the company in the matter of its liability to fines or penalties: provided, further, that the power of the commission to impose the penalties prescribed by the Constitution, or by the law, for the failure or refusal of any corporation to obey its valid orders and requirements, shall not be construed to relieve any company or corporation from the penalties now prescribed or hereafter to be prescribed by law for the failure or refusal of any such company or corporation to perform any public duty or requirement prescribed, or which may be prescribed by any law of this State, but that such penalties may be enforced by the commission in addition to the penalties authorized to be imposed by the Constitution and by law for failure or refusal to obey any of its valid orders or requirements.

Powers of the Commission with Respect to Rendering and Enforcing Judgments, Penalties, &c., Collection and Payment of Same into the Treasury.

27. The commission shall have power and authority in all matters of which it has jurisdiction under the Constitution, or the laws of this Commonwealth, to render and enter up judgment for fines and penalties, or for the recovery of money, in any complaint, proceeding, contest, or controversy, whether instituted of its own motion or otherwise, and to issue process of execution thereon, which may be levied and executed in like manner as executions awarded and issued upon the judgments or decrees of the courts of law or equity of this Commonwealth. All judgments of the commission for fines or penalties, for contempt, or for the violation of any provision of the Constitution, or the laws of this State, or for the failure or refusal of any corporation to obey and observe the lawful rules, regulations, or orders of the commission, shall be entered up in favor of the Commonwealth, and when collected shall be paid by the clerk of the commission into the treasury, as hereinbefore provided.

102 The Commission to Have Power to Punish for Contempt by Fine or Imprisonment, &c., to the Same Extent and Manner as Courts; Commitment to Jail, &c.; Writ of Error.

28. The commission shall have powers and jurisdiction possessed and exercised under the law by the courts of record of this Commonwealth to punish for contempt by fine or imprisonment, or by both, any person duly summoned to appear and testify before the commission who shall fail or refuse to appear and testify, without a lawful excuse, or who shall refuse to answer any proper question propounded to him by the commission in the discharge of its duty or

who shall conduct himself in a rude, disrespectful, or disorderly manner before the commission, or any of them, deliberating in the discharge of duty in public session, and may, for any such contempt, impose the same penalties, either by fine or imprisonment, or by both, and render and enter up judgment in any such proceeding and enforce the same by process of execution or by commitment to jail, or by both, in the same manner and by like process and proceedings, and to the same extent, as may by law be done by any of the courts of this Commonwealth. The commission may commit any person adjudged by it guilty of contempt to the jail of any city or county in the Commonwealth, and the jailer thereof shall receive such person upon the commitment of the commission, attested by its clerk, first assistant clerk, or acting clerk, and confine such person in the jail of his city or county, as the case may be, for the term of imprisonment specified in the commitment, unless sooner discharged therefrom by due process of law. The said jailer shall receive for the board of any person so committed the same allowance made by law for other persons confined in such jail, which shall be paid out of the public treasury upon the allowance of the commission, certified as hereinbefore provided. The fines and judgments of the commission in any contempt proceeding may be reviewed, affirmed, reversed, or modified, as justice may require, on writ of error from the commission to the supreme court of appeals.

103 The Commission May Award and Issue, Serve, Execute, and Return Process, &c., and Compel Attendance of Witnesses, as Courts.

29. That the commission shall, in all matters within its jurisdiction, have the power and authority to award and issue, have served, executed, and returned, any writ, notice, process, order, or order of publication which may by law be awarded, issued, served, executed, or returned by or to any court of law or equity in this Commonwealth, for the purpose of compelling the attendance of witnesses, the production of books and papers, the convening of parties, or the enforcement and execution of its findings, orders, or judgments.

Writs, &c., to Run in the Name of the Commonwealth; by Whom Issued and Served; Fees; Duties of Bailiff; Penalty for Failure to Execute Writ, &c.

30. That all writs, processes, and orders of the commission shall run in the name of the Commonwealth, and shall be attested by its clerk, or first assistant clerk, or acting clerk, and shall be directed to its bailiff, and may be served, executed, and returned by the said bailiff, in any city or county of the State, or by the sergeant or sheriff, or any constable, of any city or county in this State within his bailiwick. All writs, notices, processes, or orders of the commission may be served, executed, and returned in like manner and upon like persons or property as the processes, writs, notices, or orders of the courts of record of this Commonwealth, and when so served, executed, and returned shall have the same legal effect. The bailiff or other officer serving or executing any writ, notice, process, or order of the commission shall receive the same fees and commissions allowed by

law for like services to the sergeants and sheriffs of the cities and counties of this State: provided, that the bailiff of the commission shall account for and pay to its clerk all fees and commissions received by him for any services which he may render, which
104 shall be accounted for and paid by the clerk of the commission into the treasury, as hereinbefore provided. The bailiff, or any other officer hereinbefore named, who shall fail to execute and return any writ, notice, process, or order of the commission shall be subject to the penalties prescribed by law for the failure to execute and return the process of any court, which penalties may be enforced by the judgment of the commission.

The Commission to Tax and Collect Like Fees and Costs as Courts; Fees and Mileage of Witnesses.

31. That the commission shall cause to be taxed and collected in all complaints, proceedings, contests, or controversies instituted or pending before it, like fees and costs taxed and collected for like services by the officers of the courts of this Commonwealth; also, the fees and mileage of witnesses attending upon its public sessions, and may enter judgment for the same and issue execution thereon, which execution may be levied and executed in like manner as execution issued upon the judgments or decrees of the courts of law or equity of this Commonwealth: provided, that no costs shall be taxed or collected against the Commonwealth except on appeals of corporations under the provisions of section one hundred and eighty of the Constitution, which have been aggrieved by the assessments and ascertainments made by the commission under sections one hundred and seventy-six and one hundred and seventy-eight of the Constitution.

Judgments of the Commission to be a Lien on Real Estate When Duly Docketed, &c.; How Enforced; Clerks to Docket Judgments Certified by the Clerk of the Commission.

32. That the judgments of the commission for the recovery of money, fines, or penalties shall be a lien on the real estate of the judgment debtor when duly docketed and indexed in the judgment lien docket as the judgments of the courts of record are required by law to be docketed and indexed, in the county or city in which
105 the real estate of the judgment debtor is located, and the lien of such judgment may be enforced in equity before any court having jurisdiction to enforce liens. The clerks of the courts of the several cities and counties shall docket all such judgments on the lien docket of their respective courts when a copy thereof, certified by the clerk of the commission, shall be presented for that purpose.

When Sessions of the Commission Public; Judgments to be Rendered in Public Session; When Judgment Effective; Number, Time and Commencement of Session; One Regular Session Every Three Months.

33. That the sessions of the commission for the hearing of any complaint, proceeding, contest, or controversy instituted or pending before it, whether of its own motion or otherwise, shall be public, and

its findings, decisions, and judgments shall be announced and rendered in public session. The judgments of the commission for fines or penalties, or for the recovery of money, shall take effect as of the date of such judgment, and when allowed by the commission in its order and entered up, the judgment shall bear interest from that date. The commission may, by its rules, provide for the number of its regular public sessions in each year, the time of their commencement, their duration, and for their adjournment; and may also provide for extra or special public sessions when, in their judgment, such extra or special public sessions may be necessary or required. The commission shall hold at least one regular public session in every three months in each year.

Appeal to Supreme Court; How Taken and Perfected; to be Heard Promptly, &c.; How Section Construed.

34. That the Commonwealth or any party aggrieved by any final finding, order, or judgment of the commission shall have, of right, regardless of the amount involved, an appeal to the supreme court of appeals, same to be taken and perfected within six months from the date of such final finding, order, or judgment, and the
106 supreme court of appeals may, on petition of the attorney-general, or any other party so aggrieved, if said petition be presented within six months from the date of the final finding, order, or judgment of the commission, award a writ of supersedeas to any such final finding, order, or judgment, and may review, affirm, reverse, or modify the same, as justice may require, and enter therein such order as may be right and just. All such appeals shall be taken and perfected, heard and determined, and the mandate of the supreme court of appeals certified down to the commission in the same manner as appeals in equity causes from the circuit or corporation courts of this Commonwealth to the supreme court; except such appeals shall be heard and disposed of promptly by the supreme court, irrespective of its place of session, next after *habeas corpus* and Commonwealth's cases already on the docket; provided, however, this section shall not be construed to interfere in any way with the provisions of subsections (*d*), (*e*), (*f*), and (*g*) of section one hundred and fifty-six of the Constitution, as to appeals from the action of the commission, prescribing rates, charges, or classification of traffic, or affecting the train schedule of any transportation company, or requiring additional facilities, conveniences, or public service of any transportation or transmission company, or refusal to approve a suspending bond, or requiring additional security thereon, or an increase thereof; but shall be construed to provide only for appeals from the final findings, orders, and judgments of the commission in cases not expressly provided for by the Constitution.

Suspending Bond on Appeal; Costs, &c.

35. That the commission may require a suspending bond on any appeal, in such penalty and with such surety thereon as it may deem sufficient, and may during the pendency of any appeal, at any time, require the increase of any such bond or additional security thereon;

provided, however, there shall be of right, regardless of the amount, an appeal from the action of the commission refusing to approve a suspending bond, or requiring an increase thereof, or ad-
107 ditional security thereon, in like manner as provided by subsections (*d*), (*e*), (*f*), and (*g*) of section one hundred and fifty-six of the Constitution. The commission may also require bond for the payment of costs in such penalty, and with such security, as it may deem sufficient, in any complaint, proceeding, contest, or controversy instituted or pending before it. All suspending bonds, and bonds for the payment of costs, taken or required to be taken by the commission, shall be made payable to the Commonwealth, and may be enforced in the name of the Commonwealth by motion or other legal proceeding or remedy before the commission, or in any circuit or corporation court of this Commonwealth having jurisdiction of a motion or action on such bonds, and the process and proceedings thereon shall be as provided by law upon bonds of the like character required and taken by any court of this Commonwealth, and the commission or such circuit or corporation court may render and enter up like judgments upon such bonds as may, by law be rendered and entered upon bonds of like character, and process of execution shall issue upon such judgments, and may be levied and executed as provided by law in other cases.

Transportation Company upon Final Decision of Appeal to Refund Amount Collected Pending the Appeal in Excess of that Authorized; Penalty; Amount of Judgment Distributed Among Those Entitled Thereto.

36. That if any transportation company, upon the final decision of an appeal from the action of the commission prescribing rates, charges, or classification of traffic, confirming or modifying the action of the commission, shall fail to refund in the manner and within the time prescribed in the notice of the commission all amounts which the appealing company may have collected pending the appeal, in excess of that authorized by such final decision, upon notice to such corporation by the commission of such final decision, then the commission, after thirty days' notice to any such
108 company, may, unless the amount required by such order be paid to the clerk of the commission, render and enter judgment in the name of the Commonwealth, for the use of the persons, firms, and corporations entitled to the same, against any such company for the aggregate amount of such collections and for costs, and may enforce the amount of such judgment and costs by process of execution as hereinbefore provided as to the enforcement of the judgments of the commission. The commission shall, upon the collection of said judgment, forthwith distribute the amount thereof, through its clerk, among the parties entitled thereto, respectively, in such manner as it may by its rules or orders prescribe, and shall, upon the payment or collection of any such judgment, enter the same satisfied upon its records, and have the same entered satisfied on the judgment lien docket of the court of any city or county where the same may have been docketed, and the satisfaction of any such

judgment shall be a bar to any further action or recovery against any such corporation to the extent of such recovery.

Accidents.

37. The commission may investigate the cause of any accident on any transportation line which, in its judgment, shall require investigation.

Transportation of Convicts and Insane Persons.

38. The commission is authorized to enter into contracts with the several railroads and other transportation companies, doing business in this State, for the transportation of convicts, insane, or other persons, who are cared for by the State, and of sheriffs and all necessary guards, to and from the penitentiary and the several State hospitals in this State, upon such terms as the commission and the several companies may agree, not to exceed two cents per mile for each person transported under such contract. Said contracts
109 may be renewed or extended for such time as the commission shall deem to be to the interest of the State.

The Commission to Determine the Most Direct Route, Furnish Schedules, &c., to Hospitals and Penitentiary.

39. The commission shall determine the most direct and practicable route from each courthouse by which to convey persons to the penitentiary and the several State hospitals, and shall file with the auditor of public accounts, the superintendent of the penitentiary, the superintendents of the several State hospitals, and the clerks of the several counties and corporations, a schedule of the route determined upon.

The Commission to Furnish Schedule Certificates of Transportation; by Whom Signed; How Companies May Collect on Same.

40. The commission shall furnish with such schedule certificates of transportation in the form agreed upon in its contract with the companies. Said certificates shall be signed by the clerk of the commission, and shall be taken up by the conductor or other agent authorized by said companies to collect fare, as other tickets or fares are collected. They shall be presented by the companies holding the same, either monthly or quarterly, as may be determined upon by the commission and the companies, to the auditor of public accounts, who shall examine the same, and if found correct, pay them as other claims against the State are audited and settled.

The Commission to Furnish Compilation of Statute Laws, &c., Governing Common Carriers, Distribution of Same; Rules to be Posted.

41. The commission shall, annually, on the first day of January, publish a compilation of the statute laws governing common carriers in the State of Virginia, together with a compilation of the rules and

regulations prescribed for their government by the commis-
110 sion, and shall furnish a sufficient number of copies to each railroad company or transportation company, or person operating the same, to enable such company or person operating the same to post and keep posted conspicuously in every passenger and freight depot of the company, a copy of such laws, rules and regulations; and every such company, or person operating the same, is hereby required to see that such copies, when furnished by the commission, are posted and kept posted in the manner prescribed.

Seal of the Commission; to What It May be Affixed; Its Force and Effect; Fee.

42. That the commission shall have and use a common seal, to consist of a circular die with the coat-of-arms of Virginia and the title "State Corporation Commission" stamped upon the face of the die, and shall have power to affix said seal to any paper, record, or document when necessary for the purpose of authentication, and such seal, when so affixed to any paper, record, or document emanating from the commission or its clerk's office, shall have the same force and effect for authentication as the seal of any court of record in this State. The clerk of the commission shall collect a tax of one dollar for each impression of said seal upon any paper, record, or document, for which tax he shall account to the auditor of public accounts, and pay the same into the public treasury as hereinbefore provided.

Docket.

43. That the commission shall keep a docket of all complaints, proceedings, contests, and controversies instituted or pending before it, and all cases shall be numbered on the docket in the order in which they were instituted, and the papers therein jacketed and numbered in the same consecutive order, and when finally determined and disposed of, the papers and files shall be filed and preserved in the same numerical order and properly indexed for convenient future reference.

111 Allowance for Expenses, &c., to be Paid Out of the Public Treasury; Compensation, Mileage, &c., of Witness.

44. The commission shall, by order entered upon the records of its proceedings, make all allowances to be paid out of the public treasury for expenses, witness fees, and mileage, and for service of process, and when so allowed and certified by its clerk to the auditor of public accounts, the last-named officer shall draw his warrant for the payment of the amount of any such allowances out of the public treasury: provided, that the commission shall not allow to any witness exceeding one dollar per day for his attendance, nor exceeding five cents per mile for each mile traveled to and from the place of attendance, and shall not make any allowances to be paid out of the public treasury save when the expenses incurred, the witness' attendance, or the services of process, is at the instance of the commission, or on behalf of the Commonwealth.

Register of Corporation; List of Charters to be Furnished by Secretary of the Commonwealth.

45. That the commission shall have made and kept in its clerk's office a register of all corporations, which register shall contain the corporate names of all corporations heretofore chartered and existing at this date, so far as the same may be obtainable, and those hereafter chartered by the laws of this State, and of all foreign corporations heretofore or hereafter licensed to transact business in this State, and as to domestic corporations shall contain also the following information, to-wit: Date of incorporation. Names and residences of officers and directors. Amount of capital stock, and whether preferred or common, or both, and the amount of each. Amount of bonds to be issued. Nature of corporate enterprise or business to be conducted. The place of its principal or general office or place of business.

The secretary of the Commonwealth shall forthwith prepare
112 and furnish to the commission a list of all charters recorded in his office up to April first, nineteen hundred and three, containing the above information so far as shown by the records of his office.

The Commission to Issue All Charters, &c., and to Certify Same under Its Seal to the Secretary of the Commonwealth: Recordation; Granting License to Foreign Corporations; Fees.

46. The commission shall issue all charters and all amendments, extensions, and renewal of charters, upon application, complying with the provisions of the incorporation laws of this State, and when any charter, or amendment, extension, or renewal of charter is issued, shall certify the same, under its seal, to the secretary of the Commonwealth for recordation as required by law, and the commission shall have the granting of all licenses to foreign corporations to transact business in this State. The commission shall, before approving any application or petition for a charter, or granting any license to any foreign corporation to transact business in this State, require the payment of the fees prescribed by law, and on or before the first day of March in each year, in addition to the franchise tax and the fees otherwise prescribed by law, require each domestic corporation, other than a purely charitable institution, and each foreign corporation doing business in this State, to pay a registration fee as follows: Where the proposed maximum capital stock is fixed at fifteen thousand dollars or under, or if such corporation is organized on a mutual basis or without capital stock, five dollars; in excess of fifteen thousand dollars and not over fifty thousand dollars, ten dollars; in excess of fifty thousand dollars and not over one hundred thousand dollars, fifteen dollars; in excess of one hundred thousand dollars and not over three hundred thousand dollars, twenty dollars; and in excess of three hundred thousand dollars, twenty-five dollars; all of which fees shall be collected and received by its clerk and accounted for and paid into the public treasury as hereinbefore provided.

113 The Commission to Designate Depository; Deposits; Checks; Officer Collecting Judgment to Pay Same within Ten Days; Penalty.

47. That the commission shall designate some State depository as a place of deposit for the moneys received by its clerk under this or any future act of the general assembly, and shall require its clerk to deposit therein all moneys received by him at least once in every twenty-four hours, and all checks upon said depository drawn by said clerk shall be countersigned by the chairman or acting chairman of the commission. That the bailiff of the commission, or any sergeant, sheriff, or constable who shall collect any judgment, or any part thereof, rendered by the commission, shall, within ten days after such collection, pay the amount thereof, either in current funds or by certified check, to the clerk of the commission. Any officer of the commission, or any sergeant, sheriff, or constable who shall omit or fail to perform any of the requirements of this section, shall be fined not less than five hundred dollars nor more than one thousand dollars, which may be imposed and judgment rendered therefor and enforced by the commission. All proceedings against any such officer and the surety on his official bond, may be had as provided by law in reference to official bonds, for default in the accounting for, or payment over, of any moneys collected or received by him under the provisions of this act.

The Commission to Notify Corporation of the Amount of Registration Fee.

48. That the commission shall annually, on or before the first day of December, notify each corporation subject to a registration fee of the amount thereof, and when the same is payable, and when paid its clerk shall promptly receipt therefor to the corporation paying the same, such notice to be mailed to the last address furnished by such company.

114 Free Transportation to Members of the Commission.

49. That all transportation companies operating in this State shall, on the order of the commission, attested by its clerk, or on an order signed by any member of the commission, furnish free transportation to the members of the commission and its officers, when traveling on official business, and the order for such transportation shall show that the same is desired for official business.

Supplies, Printing, Expenses, &c.

50. That the commission shall have authority to purchase all necessary supplies, and to have all necessary printing and publishing done, and to secure all telephone and telegraph service necessary to the efficient discharge of its duties, and the same shall be paid out of the fund appropriated for its incidental and contingent expenses: provided, however, that all printing necessary for the commission shall be done by the public printer on its order.

Report of the Commission.

51. That the commission shall, on or before the first day of December in each year, tabulate and publish in statistical form such reports made to it in pursuance of the Constitution and laws of this State, as required by subsection (*a*) of section one hundred and fifty-six of the Constitution proper, and shall on the same date in each year, make report to the governor as required by subsection (1) of said section, to be by him laid before the general assembly at each regular session thereof.

Impeachment.

52. That any member of the commission who, during the term of his office, shall be directly or indirectly employed by, or hold any office in relation to, any transportation or transmission
115 company, or in any wise become interested therein, financially, or shall engage in the practice of law, or be guilty of misfeasance or malfeasance in office, shall be impeached and removed from office in the same manner provided for the impeachment and removal of judges of the supreme court of appeals; and any officer of the commission for like causes, or for neglect of duty, or when, in the judgment of the commission, the public service will be promoted thereby, may be removed from office by the commission.

Board of Public Works and Railroad Commissioner to Surrender Records, Books, &c., to the Commission.

53. The board of public works and the railroad commissioner shall on the second day of March, nineteen hundred and three, or as soon thereafter as requested by the commission, surrender and deliver to the commission the records, books, files, and papers of their respective offices, and thereafter said records, books, files, and papers shall be and remain a part of the records, books, papers and files of the commission.

Salaries.

54. That the annual salaries of the members and officers of the commission shall be as follows: Each commissioner, four thousand dollars; the clerk, two thousand dollars; the first assistant clerk, fifteen hundred dollars; the stenographer, twelve hundred dollars; and the bailiff, nine hundred dollars; and the auditor of public accounts shall draw his warrant upon the public treasury for the payment of said salaries in equal monthly payments for each month of their respective terms of office.

Not to Impair Jurisdiction of Courts; Concurrent Jurisdiction.

55. This act shall not be construed to take away or impair the jurisdiction of any court of this Commonwealth to hear and determine any proceeding, suit or motion of which it now has jurisdiction, for the enforcement of any fine or penalty against any corporation

under the laws of this State, but that the powers and jurisdic-
116 tion of the commission to hear, determine, and enforce such fines and penalties shall be construed to be concurrent.

Powers and Duties Vested in Commission.

56. The commission is hereby charged with all the duties and vested with all the rights, property, functions, and powers heretofore performed, vested in, and exercised by the board of public works, except in so far as the same may be in conflict with the Constitution and laws of this State, and the commission shall particularly perform the duties and exercise the powers heretofore performed and exercised by said board, prescribed in sections fifty-nine to seventy-eight, inclusive, of this act.

The Commission or Some Member to Attend the Sale of Work of Internal Improvement in which the State is Interested.

57. The commission, or some member thereof, shall, and is hereby directed and authorized to, attend the sale of any work of internal improvement in which the State is a stockholder or otherwise interested, whether such sale be made by virtue of mortgage, judgment, decree, or other lien.

When State may proceed against company by *quo warranto* and sell the works for abandonment or failure to use; deed of conveyance to be executed; collection of debts and proceeds of sale; purchaser to become corporation with privileges, &c., of old company.

58. If the works of any internal improvement company be not commenced and be completed within the time prescribed by law, or by its charter, or if after such works be completed, the company abandon them, or for three successive years cease to use and fail to keep them in good repair, in each of these cases the State may proceed against such company by writ of *quo warranto*, or in-
117 formation in the nature of a writ of *quo warranto*, and if in any such proceeding there is a judgment against the company, the commission shall forthwith take possession of its work and property and sell the same (except the debts owing to the company), and convey the works and property so sold to the purchaser thereof as soon as the purchase money has been paid, the deed of conveyance to be executed by the chairman of the commission under its seal. The commission shall, moreover, collect, as far as practicable, the debts aforesaid, and apply the proceeds thereof, and of the said sale, after deducting the costs and expenses of the collection and sale, to the discharge of the liabilities of the company, and whatever remains after said liabilities are discharged, pay into the treasury of the State. Upon such conveyance to the said purchaser, he shall forthwith be a corporation by any name which may be set forth in such conveyance, or any writing signed by him and admitted to record in the county or corporation wherein the conveyance shall be admitted to record; and to the corporation thus cre-

ated all the provisions of section twelve hundred and thirty-four of the Code shall apply, except that the franchises, rights, and privileges to which such corporation shall succeed and the duties which it shall perform, shall be such as would have been had or performed by the first company but for the judgment aforesaid in the proceeding by writ of *quo warranto*, or information in the nature of a writ of *quo warranto*, save only as in said section provided.

The Commission May Convey State's Interest in Road to County.

59. It shall be the duty of the commission, with the consent of the board of supervisors of any county given at any regular meeting by a two-thirds vote of all elected in such county, where in their opinion the public interest will be promoted thereby, to transfer and convey the State's interest in any turnpike or plank road, or any part thereof, to the county or counties in which said road lies. The transfer shall be made by a formal order to be entered upon the minutes of the proceedings of the commission, and a copy to
118 be transmitted by its clerk to the clerk of the circuit or county court for record in the clerk's office in each county where the said road lies.

The Commission to Collect Dividends, &c., from Work in which State is Interested.

60. The commission shall be vested with power to collect any fund or dividend due from any work of internal improvement in which the State is interested, and to pay the same into the treasury to the credit of the sinking fund.

Proxies for Stock Held by State.

61. The commission, for all works in which the State may hold stock heretofore subscribed and not disposed of, shall from time to time appoint one or more proxies to represent the stock held by or on behalf of the State in the company having control of such work: provided, that the present proxies shall hold over until their successors are appointed.

Duty of State Proxies.

62. In cases in which it may be desired by the commission, its proxies shall cause to be transmitted to it copies of the reports of the proceedings of the directors of the companies in which they are proxies, the proceedings of the stockholders thereof, and other documents relating to the works, and shall make such reports as the commission may require or to the proxies may seem proper.

State Directors.

63. In every company to the stock of which the board of public works or the State has heretofore subscribed and which has not been disposed of, the commission shall appoint such portion of the di-

rectors as shall bear to the whole number of the directors of such company the same proportion, as nearly as possible, that the
119 stock held on behalf of the State in such company bears to the whole capital stock thereof.

When Appointed.

64. The appointment of directors in a company, according to the preceding section, shall be made by the commission before each annual meeting therein.

Terms of Directors and Proxies.

65. Proxies and directors appointed by the commission shall be in office from the time such appointment is in force until their successors are appointed, unless sooner removed. When a proxy fails to attend at any meeting, the commission, without removing him, may make a temporary appointment, to be in force during his absence.

The Commission to Keep Register of the Property of the State.

66. The commission and the second auditor shall cause to be registered, in books to be kept in their respective offices for the purpose, all claims, stocks, bonds, choses in action, and all property, real or personal, due or belonging to the State, with such description thereof as will enable easy reference to the same by any State officer or person interested.

Money Recovered by Action in Circuit Court of Richmond.

67. Any money forfeited to the commission, and any money which ought to be paid into the public treasury to the credit of the fund for internal improvement, shall be recovered, with interest on such money from the time the same ought to be paid by motion, after fifteen days' notice, or by action in the circuit court of the city of Richmond. The second auditor shall institute and prosecute in the name of the Commonwealth the proceedings after an order for such motion or action shall have been made by the commission.

120 Agents for the Collection of Debts, &c.

68. The commission may appoint agents for the collection of its debts or claims, and authorize them to secure payment thereof on such terms as it may approve, except it shall not appoint an agent to collect any judgment, fine, or penalty rendered or imposed by the commission.

When Commission May Purchase Estate Taken Under Execution.

69. When the estate of any person taken under execution or for sale under any decree or deed of trust for any such debt or claim will not sell for the amount thereof, the commission may purchase such estate.

May Sell and Convey Any Estate so Purchased.

70. The commission may sell any estate so purchased, at such time and on such terms as the commission may deem advantageous, and the commission shall execute a deed conveying to the purchaser all the interest which the commission may have in such land.

Compensation of Agent Under This Act.

71. For the services of any agent under this act, the commission may allow compensation not exceeding in any case, five per centum on the money actually paid into the treasury.

The Commission to Fix Tolls, &c.

72. Where the tolls of any canal, navigation, or bridge company are not prescribed by its charter, the commission shall fix such tolls as may seem to it reasonable, and may alter the same at its pleasure.

121 Assent by Stockholders to Sec. 65 of This Act.

73. If in any company incorporated and organized before the first day of July, eighteen hundred and fifty, to the stock of which the board of public works or the State has, before or since that date, subscribed, a resolution be adopted in general meeting of the stockholders (by the vote of the majority of the stockholders, other than the State), assenting to section sixty-five of this act, the same shall thenceforth be of the same force in respect to such company that it would be if it had formed a part of the act incorporating such company. If such assent be not given, the votes in the meetings of the stockholders of such company and the appointment of directors therein shall continue to be according to the laws in force on the day before the Code of eighteen hundred and eighty-seven took effect, unless it be a company whose charter is, by the terms thereof, subject to be altered, amended, or modified by the general assembly; in which case the said section sixty-five shall be of the same force in respect to it as if such assent had been given.

Sale by James River and Kanawha Company of Its Works, &c., to Richmond and Alleghany Railroad Company.

74. That so much of the act entitled "an act to authorize the James River and Kanawha Company to make sale and transfer of all its works, property, and franchises to the Richmond and Alleghany Railroad Company, and to define the powers and duties of the board of public works in reference thereto," approved February twenty-seventh, eighteen hundred and seventy-nine, as has not been carried into effect, shall continue in force, and the commission shall exercise all the powers and perform all the duties conferred and imposed upon the board of public works by the said act.

The Commission to Make Report Showing Condition of Work or Company in Which State Has an Interest.

75. The commission shall make report to the general assembly at each regular session, showing the condition of each work made

on the State account, or to the stock of which the board
122 of public works or the State had heretofore subscribed, and giving such other information in relation thereto as it may deem pertinent. And the second auditor shall also report to the general assembly, at such regular session a succinct statement relative to every such work, showing the gross amount of the year's income therefrom, the net balance of such income remaining, after paying current expenses, and interest on debts due on account of the work, and what percentage, such net balance is on the capital expended. On or before the first day of October the said reports shall be delivered to the superintendent of public printing, and he shall cause the same to be printed.

76. That subsection twelve of section one hundred and eighty-three, and sections twelve hundred and twelve, twelve hundred and thirty-six, twelve hundred and thirty-nine, twelve hundred and fifty-four, twelve hundred and ninety-eight, twelve hundred and ninety-nine, thirteen hundred, as amended by an act of the general assembly, approved March fourth, nineteen hundred; thirteen hundred and one, thirteen hundred and two, thirteen hundred and three, thirteen hundred and six, thirteen hundred and seven, thirteen hundred and eight, thirteen hundred and ten, thirteen hundred and eleven, as amended by an act of the general assembly, approved March fourth, nineteen hundred; thirteen hundred and twelve, thirteen hundred and thirteen, thirteen hundred and fourteen, thirteen hundred and fifteen, thirteen hundred and sixteen, thirteen hundred and seventeen, thirteen hundred and eighteen, thirteen hundred and nineteen, thirteen hundred and twenty, thirteen hundred and twenty-one, thirteen hundred and twenty-two, thirteen hundred and twenty-three, thirteen hundred and twenty-four, thirteen hundred and twenty-five, thirteen hundred and twenty-six, thirteen hundred and twenty-seven, thirteen hundred and twenty-eight, thirteen hundred and twenty-nine, thirteen hundred and thirty, thirteen hundred and thirty-one, thirteen hundred and thirty-two, thirteen hundred and thirty-three, and thirteen hundred and thirty-seven of the Code of eighteen
123 hundred and eighty-seven, and sections eleven, twelve, and thirteen of the act of the general assembly of Virginia, approved March third, eighteen hundred and ninety-two, entitled an act to further regulate and control common carriers doing business in this State, and further defining the duties of the railroad commissioner in relation thereto, be, and the same are hereby, repealed.

77. This act shall be in force from its passage.

COMMONWEALTH OF VIRGINIA:

I, D. Q. Eggleston, Secretary of the Commonwealth of Virginia, and keeper of the seals thereof, do hereby certify that the foregoing (excepting the headings to the sections thereof) is a true copy of an act of the General Assembly of Virginia, entitled "An act to put into effective operation the provisions of the constitution relating to the creation, appointment and organization of the 'State Corporation Commission,' its jurisdiction, powers, functions and duties; the qualifications of the members and officers thereof, their appointment and salaries; the location of its offices and places and times of its public

sessions; its writs, processes, orders, findings and judgments; appeals from its orders, findings and judgments, and its expenses, etc.," approved April 15, 1903, as the same is published according to law; that said act is still in full force and effect, and has been so continuously since prior to January 1st, 1904,—with this exception, that, by an act approved March 15, 1906, section 58 of the foregoing act was amended, and that said section is printed above as it reads after, instead of before, its amendment.

Given under my hand and the Lesser Seal of the Commonwealth, at Richmond, this 25th day of June, in the year of our Lord nineteen hundred and seven.

[Lesser Seal of the Commonwealth.]

D. Q. EGGLESTON,
Secretary of the Commonwealth and
Keeper of Seals.

124 DEFENDANTS' EXHIBIT NO. 3.

COMMONWEALTH OF VIRGINIA:

Department of the State Corporation Commission.

CITY OF RICHMOND, *Tuesday, Oct.* 6, 1903.

The Commission having, as required by law, formulated a set of Rules of Practice and Procedure, in cases and proceedings before it, it is ordered that the same become operative on and after this date, and that they be spread in full upon the minutes of the Commission, and being so recorded in the Order Book, are in the words and figures following, viz:

Rules of Practice and Procedure Before the State Corporation Commission of Virginia.

Public Sessions.

1. The regular Public Sessions of the Commission, sitting as a court, for the hearing of contested cases and matters properly coming before it, will be held at its offices, in the City of Richmond, on the second Monday in January, April, June, September and November in each year. These sessions may be adjourned from time to time, and shall last so long as the business before the Commission, and the public interests may require. These sessions may be adjourned, during their respective terms, to any other place in the State, upon order of the Commission, that the public necessity or the convenience of the parties require an adjournment.

Special judicial sessions of the Commission may be held at any time upon order of the Commission, or a majority of its
125 members, in the City of Richmond, or elsewhere in the State, for the hearing of all matters over which the Commission has jurisdiction.

Parties.

2. All complaints, proceedings, contests, or controversies, before the Commission, shall be instituted in the name of the Commonwealth, as complainant, and the party against whom the complaint is preferred, or the proceeding instituted, shall be the defendant; in all proceedings instituted by the Commission of its own motion, the complainant shall be, "The Commonwealth at the relation of the State Corporation Commission"; in all other complaints and proceedings, instituted by parties, the complainant shall be styled "The Commonwealth at the relation of ——."

Any person, firm, corporation, or association, or any commercial body, may institute a complaint before the Commission. When instituted by an unincorporated association or mercantile body, the complaint must be in the name of a committee of not less than two persons on behalf of such association or body.

When the complaint concerns anything done, or omitted to be done, by a single carrier or other corporation, no other need be made a party, but if it relates to joint tariffs, or questions in which two or more carriers or other corporations are interested all such must be made parties. A complaint may embrace several carriers, or lines of carriers, operated separately, in the same proceeding, when the subject matter of the complaint involves substantially the same violation of the law, or of the rules and regulations of the Commission, by the several carriers or lines. Persons or carriers not originally parties may apply, in any pending case or proceeding, for leave to intervene, and to be heard upon the questions involved. Such application must be by petition, verified by oath, which must set forth the petitioners' interest in the proceeding.

126 Petitions and Complaints.

3. All complaints for the redress of alleged grievances or violation of law by the defendant must be in writing and addressed to the Commission. Such petition or complaint must distinctly and plainly set forth the grounds of complaint, the items being numbered, and the petition or complaint must be verified by affidavit. The name of the corporation, or other parties complained against, must be stated in full, and the address of the complainant, with the name and address of his attorney or counsel, if any, must appear upon the petition, where the complaint is made otherwise than on the motion of the Commission.

Notice.

4. The petition or complaint may be filed before the Commission, or with its clerk, and, thereupon, a notice, in the form of a writ, shall be issued, according to law, by the Clerk, directed to the Bailiff of the Commission or other proper officer, summoning the defendant or defendants to appear before the Commission on the day named therein, which shall not be less than ten days from the filing of the complaint. The said writ and notice, and a copy of the complaint, shall be served upon the defendant or defendants, and return made according to law.

Answers.

5. Upon the day named in the writ, or notice, the defendant or defendants shall file before the Commission an answer in writing, specifically admitting or denying, by items, the material allegations of the complaint, and setting forth the facts which will be relied upon to support any such denial. The answer shall be verified by affidavit, and be signed by the attorney or counsel, if there be such. If the parties are ready, upon the filing of the answer, the Commission may proceed at once to hear the matter of contest. If either party be not prepared for the hearing, then an adjournment may be had
127 and the day for the hearing fixed upon the application of either party, in the discretion of the Commission.

Instead of answering the complaint, defendant or defendants may demur to the same, filing a demurrer in writing on the return day.

Amendments.

6. Upon the application of any party, amendments to any complaint or answer in any proceeding or investigation may be allowed by the Commission, in its discretion.

Stipulations or Agreed Facts.

7. The parties to any complaint or proceeding before the Commission may, by stipulation in writing, filed with the Commission, agree upon the facts, or any portion thereof, involved in the controversy, which stipulation shall be recorded and used as evidence on the hearing. It is desired that the facts be thus agreed upon whenever practicable.

Hearings.

8. Upon the filing of the answer, the hearing will proceed at once, or the Commission will assign the time and place for the same. Witnesses will be examined orally before the Commission, unless testimony or facts are agreed upon, as otherwise provided in these rules. The petitioner or complainant must prove the existence of the facts complained of, unless they are admitted, or the defendants be in default by failing to answer. Facts alleged in the answer must be proved by the defendant or defendants, unless admitted by complainant. In cases of failure to answer, the Commission will take such proof of the charge as may be deemed reasonable and proper, and make such order thereon as the circumstances of the case may require.

128 Depositions and Witnesses.

9. The testimony of any witness may be taken by deposition, at the instance of a party, in any proceeding or investigation before the Commission after the same is at issue by the filing of the answer. Such depositions must be after notice, and before the officer required and allowed by the statutes of Virginia. Any party, complainant or defendant shall be entitled to process to compel the attendance of wit-

nesses or the production of books and papers before the Commission. Such process will be issued, for proper service and return by the clerk of the Commission, upon application of any party to the proceeding. When depositions are taken they must be returned to the Clerk of the Commission, as depositions are required by law to be returned to the Clerk of a court of chancery.

Argument.

10. Whenever requested by the proper authorities, the Attorney-General of the State may represent the complainant in any proceeding.

Arguments may be made orally before the Commission or written or printed briefs may be filed in any case within such time as may be prescribed by the Commission in such case. For convenience in reading and filing, it is requested that, whenever practicable, in cases of importance, arguments be printed.

Special Matters.

11. In the performance of special functions of a judicial nature, imposed upon it directly by law, and not instituted by any complaint such as the assessment of property of corporations and other like matters, such notices will be given and proceedings be had, as are required by the statutes under which the Commission acts in the performance of such duties.

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General Business.

12. The offices of the Commission, on the fourth floor of the City Hall of Richmond, will be open for the transaction of business on week days from 9 A. M. to 6 P. M. When the Commission is not in session, applications for charters and all papers to be presented to the Commission, or filed in its offices, may be left with the Clerk. Official communications by mail should be addressed to the "State Corporation Commission," and not to the Chairman or any member of the Commission individually.

COMMONWEALTH OF VIRGINIA:

Department of the State Corporation Commission.

CITY OF RICHMOND, *8th of January*, 1906.

The books, papers and records of the State Corporation Commission having been removed from the quarters heretofore occupied by it in the City Hall of the City of Richmond to the rooms assigned to it for the use of the members and the clerical force of the Commission, including a room assigned to it for use as a hearing or court-room, all in the restored Capitol Building of the State; and the Commission being now in occupancy and possession of the said rooms and said court-room in the Capitol Building;

It is ordered, That the same be and remain its permanent quarters and hearing or court-room until other provision is made by law

VIRGINIA, *City of Richmond, To wit:*

We, R. R. Prentis and R. T. Wilson, chairman, and clerk, respectively, of the State Corporation Commission of Virginia, do hereby certify that the foregoing is a full, complete and true copy of the rules of practice and procedure before the said Commission;
130 that the said rules, &c., were prescribed and entered of record as above set forth; that, as is above shown, section 12 of said rules, &c., was, in one respect, amended by the foregoing order of January 8th, 1906; and that, with the exception of said section 12, all of the foregoing rules, &c., are now in full force and effect, and have been so continuously since the 6th day of October, 1903.

In testimony whereof, we have hereunto set our hands and affixed the seal of the said State Corporation Commission, this, the 25th day of June, 1907.

[Seal of the State Corporation Commission of Virginia.]

ROBERT R. PRENTIS, *Chairman.*
R. T. WILSON, *Clerk.*

This day, R. T. Wilson, clerk of the State Corporation Commission of Virginia, to me personally known, appeared in person before me, the undersigned, a notary public in and for the City of Richmond, in the State of Virginia, and, before me, in my said city, subscribed and made oath to the foregoing certificate.

In testimony whereof, I have hereunto set my hand and affixed my official seal this, the 25th day of June, 1907.

[NOTARIAL SEAL.] JNO. S. EGGLESTON,
Notary Public.

131 DEFENDANTS' EXHIBIT NO. 4.

STATE OF VIRGINIA, *City of Richmond, To-wit:*

This day, R. T. Wilson, to me personally known, appeared in person before me, the undersigned, a notary public in and for the city aforesaid, in the State of Virginia, and made oath before me, in my said city as follows:

That he is now, and has been continuously since the 31st day of July, 1906, the clerk of the State Corporation Commission of Virginia.

That, between the 31st day of October, 1906, and the 27th day of April, 1907, the said Commission was engaged a great number of days, in receiving testimony, hearing argument, and otherwise considering, the matters and things involved in and connected with the proceeding before said Commission, which may be called the "Passenger Rate Proceeding," and in which the said Commission, on the 27th day of April, 1907, entered its order prescribing the maximum passenger rates to be charged by the several railroad companies mentioned in said order.

That all of the railroad companies mentioned in said order appeared before the said Commission during the course of said proceeding, filed answers in the same, on the 1st day of November,

1906, produced witnesses before said Commission, introduced much documentary evidence, and made elaborate defences therein.

That the oral testimony adduced before said Commission by all of the railroad companies appearing in said proceeding was taken down by stenographers, and thereafter reduced to writing, and such testimony, together with the documentary evidence also introduced in said proceeding, and the evidence in the "Freight Rate Proceeding," next hereinafter referred to, covers several thousand pages.

That, prior to the said 27th day of April, 1907, the said Commission had devoted several months to the hearing of evidence
132 and argument in a proceeding before it, the object of which was to enter an order relating to *freight* charges to be made by the railroad companies which were parties to that proceeding, which may be called the "Freight Rate Proceeding"; that the *Southern Railway Company, Chesapeake & Ohio Railway Co., Norfolk & Western Railway Co., Atlantic Coast Line Railroad Co.,* and *Louisville & Nashville Railroad Co.,* were all parties to said "Freight Rate Proceeding," and not only filed answers, but introduced much testimony therein; that the oral testimony adduced before said Commission by all of the railroad companies appearing in said "Freight Rate Proceeding" was taken down by stenographers, and thereafter reduced to writing, and such testimony, together with the documentary evidence also introduced in said proceeding, covers several thousand pages; that the said evidence in said "Freight Rate Proceeding" was made a part of the evidence in said "Passenger Rate Proceeding," and that all of the evidence referred to in this affidavit is now in the possession and custody of the said affiant, in his capacity as clerk of the said Commission, and is preserved by him to be made a part of the record of said "Passenger Rate Proceeding" when so ordered by said Commission, in case of appeal in said proceeding.

That the signature next hereunto affixed is the signature of the said affiant.

R. T. WILSON.

In testimony whereof, I, the aforesaid notary public, have hereunto subscribed my signature, and affixed my notarial seal, this the 25th day of June, 1907.

[NOTARIAL SEAL.] JNO. S. EGGLESTON,
Notary Public.

133 DEFENDANTS' EXHIBIT NO. 5.

VIRGINIA:

Pleas before the State Corporation Commission, at its Court-room in the City of Richmond, Virginia, on the 27th Day of April, 1907.

Judicial Case 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION

v.

STEAM RAILROAD COMPANIES.

Be it remembered, that heretofore, to-wit: on Tuesday, the 31st day of July, 1906, the following notice and order was entered:

Offices of the State Corporation Commission.

RICHMOND, VA., *31st Day of July,* 1906.

To the Several Steam Railroad Companies doing business in Virginia, and all persons interested:

Take notice, that the State Corporation Commission will, in the City of Richmond, on Thursday the first day of November, 1906, at 12:00 o'clock noon, in accordance with authority conferred by the Constitution of Virginia, and the statutes enacted by the General Assembly of Virginia pursuant thereto, hear and consider any objections which may be urged against a rule, regulation, order, or requirement of the Commission, fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers over the line of any railroad company in this State, operated by steam, between points within the State of Virginia, said maximum rate to be observed whether the transportation be entirely over the line of one railroad company, or joint transportation over the lines of two or more companies; and whether the contract for transportation of a passenger or passengers be evidenced by an ordinary
134 ticket between stations, by a mileage book, or otherwise; the Commission to have, as authorized by law, the power and authority from time to time, and as often as circumstances may require, to change or revise the rate, or by rules, regulations and requirements to provide for the more convenient and expedient putting into effect and proper observance of said maximum rate. At the said hearing and consideration of the said maximum rate of two cents per mile, the method, time and extent of promulgating and putting into effect the same, will be heard and determined by the Commission, to the end that a maximum rate for passenger transportation may be put into effect and be made applicable to all steam railroad companies doing business in Virginia, and be properly observed by them in the transportation of passengers.

BEVERLEY T. CRUMP, *Chairman;*
H. C. STUART,
JOS. E. WILLARD,
Commissioners.

And at another day, towit: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Thursday, November 1st, 1906, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION

v.

STEAM RAILROAD COMPANIES.

NOVEMBER 1ST, 1906.

In the Matter of Prescribing a Maximum Passenger Rate.

The notice in this proceeding, addressed to the several steam railroad companies doing business in Virginia and all persons interested, having been regularly published as prescribed by law once a week for four successive weeks in the Times-Dispatch, a daily news-
135 paper published in the City of Richmond, this matter came before the Commission for hearing on this day. Several of the railroad companies doing business in Virginia appeared before the Commission, by counsel, and answers were filed on behalf of the Atlantic Coast Line Railroad Company, the Norfolk & Western Railway Company, The Chesapeake and Ohio Railway Company, Seaboard Air Line Railway, Virginia and Southwestern Railway Company, Chesapeake Western Railway Company, the Valley Railroad Company and the Baltimore and Ohio Railroad Company operating the Winchester and Strasburg and the Winchester and Potomac Railroad, the Southern Railway Company, Richmond, Fredericksburg & Potomac Railroad Company, Washington-Southern Railway Company, and the Virginia and Kentucky Railway Company, and leave was granted to any of the other railroads to file answers herein before the taking of testimony was commenced. Thereupon, the hearing and investigation of the matters involved in this proceeding were continued to Tuesday, th- 4th day of December, 1906, at 11:00 o'clock in the morning.

And at another day, to-wit: At a session of the State Corporation Commission, continued by adjournment at the court-room aforesaid on Tuesday, December 4th, 1906, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION

v.

STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *December 4th*, 1906.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered in this proceeding on the first day of November, the matter herein involved came on this day to be

heard. Thereupon, the hearing and investigation was continued to Tuesday, the 11th day of December, 1906, at 11:00 o'clock in the morning.

And at another day, to-wit: At a session of the State Corporation Commission, continued by adjournment at the court-room aforesaid on Monday, December 10th, 1906, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *December 10th*, 1906.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered in this proceeding on the 4th day of December, 1906, the matters herein involved came on this day to be heard. Thereupon, the hearing and investigation was continued to Wednesday the 19th day of December, 1906, at 11 o'clock in the morning.

And at another day, to-wit: At a session of the State Corporation Commission, continued by adjournment at the court-room aforesaid on Wednesday, December 19th, 1906, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *December 19th*, 1906.

In the Matter of Prescribing a Maximum Passenger Rate.

137 Pursuant to the order entered in this proceeding on the 11th day of December, 1906, the matters herein involved, came on this day to be heard. Thereupon the hearing and investigation was continued to Wednesday the 16th day of January, 1907, at 11 o'clock in the morning.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Wednesday, January 16th, 1907, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *16th Day of Jan'y*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered in this proceeding on the 19th day of December, 1906, the matters herein involved came on this day to be heard. Thereupon by leave of the Commission, the Norfolk and Southern Railway Company, the Louisville and Nashville R. R. Co. and the New York, Philadelphia and Norfolk R. R. Co. filed their respective answers in writing before the Commission. Thereupon the hearing and investigation in this proceeding was continued to Tuesday the 22nd day of Jan'y, 1907, at 11 o'clock in the morning.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Tuesday, January 22nd, 1907, the following order was entered:

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No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *22nd Day of Jan'y*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to order entered in these proceedings on the 16th day of January, 1907, the parties again appeared before the Commission on this day and the taking of testimony herein was commenced, testimony being first adduced by the Chesapeake and Ohio Ry. Co.; and not being concluded on this day was adjourned over for further hearing until to-morrow and ordered to be continued from day to day or from time to time until concluded.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Monday, January 28th, 1907, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *28th Day of Jan'y*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered in these proceedings on the 22nd day of January, 1907, these proceedings were heard and
139 testimony was taken before the Commission bearing upon the matters at issue herein, by the Chesapeake and Ohio Railway Company and the Norfolk and Western Ry. Co. at public sessions of the Commission held for that purpose on the 23rd, 24th, 25th, of January, 1907, and this day, and testimony not having been concluded at the adjournment of this day, the further taking of testimony and the hearing of all matters involved in this proceeding was continued until Wednesday, January 30th, 1907, at 11:00 o'clock in the morning.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Wednesday, January 30th, 1907, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *January* 30, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered in these proceedings on January 28th, 1907, the hearing of the matters at issue herein was resumed on this day. The Seaboard Air Line Railway Company appeared to-day before the Commission and presented testimony on its behalf bearing upon the matter involved in this proceeding. The testimony of said railroad company having been fully heard, the further hearing of this matter and the taking of testimony herein was continued until Tuesday, the 5th day of February, 1907, at 11 o'clock in the morning.

140 And at another day to-wit: At a session of the State Corporation Commission continued by adjournment at the court-

room aforesaid on Tuesday, February 5th, 1907, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *February* 5, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered in these proceedings on the 30th day of January, these proceedings came on to be heard again this day and the further hearing and taking of testimony was continued until to-morrow the 6th day of February at 11:00 o'clock in the morning.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Wednesday, February 6th, 1907, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *February* 6, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered on yesterday these proceed-
141 ings were further heard on this day and testimony was taken before the Commission bearing upon the matters at issue herein, testimony being adduced by the Southern Railway Company, and not having been concluded at the adjournment on this day, the taking of the same and the hearing of all matters involved herein was continued to-day until to-morrow at 11 o'clock in the morning and further ordered to be continued from day to day or from time to time until the further order of the Commission.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the court-room on Tuesday, February 12th, 1907, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *February 12th*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered in these proceedings on the 6th day of February, 1907, the further hearing and taking of testimony herein not being concluded on that day was continued at a public session of the Commission held for that purpose on the 8th day of February, the 11th day of February and this day, testimony being heard on behalf of the Southern Railway Company, the Washington-Southern Railway Company and the Virginia and Southwestern Railway Company. The taking of testimony and the hear-
142 ing of the matters involved in these proceedings not being concluded on this day, these proceedings are continued until Tuesday, Feb'y 26th, 1907, at 11 o'clock in the morning.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Friday, March 1st, 1907, the following order was entered:

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *1st Day of March*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Pursuant to the order entered herein on the 12th day of February, 1907, the hearing and taking of testimony in this proceeding was resumed on the 26th day of February, 1907, and not being completed on that day was further continued and testimony taken on the 27th day of February and on the 1st day of March and the testimony on behalf of the railway companies which desired to be heard in this proceeding having been completed, the hearing and further taking of testimony herein on the part of the Commonwealth or of any defendant railway companies which may further desire to be heard was continued to a day to be fixed by the Commission of which the parties of record were to be notified.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Wednesday, March 27th, 1907, the following order was entered:

143 No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *March 27th*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

Counsel of record having been notified that the hearing and consideration of these proceedings would be resumed on this date the parties appeared again before the Commission and further testimony was taken herein. The hearing not being completed on this day, was adjourned and continued until to-morrow morning at 11 o'clock.

And at another day, to-wit: At a session of the State Corporation Commission continued by adjournment at the court-room aforesaid on Thursday, March 28th, 1907, the following order was entered:

No. 99.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
v.
STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *March 28th*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

In these proceedings the parties, by counsel, again appeared before the Commission on this day and the further consideration of the matters involved herein was resumed. The testimony was fully completed on behalf of all railroad companies making objections
144 herein and also on behalf of the Commonwealth and all matters at issue on this hearing and in this proceeding were submitted to the Commission for its consideration and decision and for the entry of such rule, regulation, order or requirement as may be deemed just, reasonable and valid herein. The Commission not yet being advised of such proper order, rule, regulation or requirement time is taken to consider thereof.

No. 99.

And at this day, to-wit: At a session of the State Corporation Commission, continued by adjournment at the court-room aforesaid, the following judgment and order was entered:

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION

v.

STEAM RAILROAD COMPANIES.

CITY OF RICHMOND, *27th Day of April*, 1907.

In the Matter of Prescribing a Maximum Passenger Rate.

The State Corporation Commission having carefully considered all the proceedings herein, and all the testimony, exhibits and statements adduced and filed before it in this proceeding, and having put its conclusions in writing, which are made a part of the record herein, the Commission, in order to carry out its said conclusions, now makes the following order and regulations and prescribes the following maximum rates to be observed by all the steam railroad companies operating in the State of Virginia, in the transportation of passengers:

1. It is ordered, that on and after the first day of July, 1907, the following steam railroad companies, viz:

Norfolk and Western Railway Company,
145 Chesapeake and Ohio Railway Company,
Atlantic Coast Line Railway Company,
Seaboard Air Line Railway Company,
Southern Railway Company,
Richmond, Fredericksburg and Potomac Railroad Company,
Washington-Southern Railway Company,
New York, Philadelphia and Norfolk Railroad Company,
Virginia and Southwestern Railway Company,
Louisville and Nashville Railroad Company

shall put into effect and observe a maximum rate of two cents per mile in the intra-state transportation of passengers in Virginia, said maximum rate to be observed whether the transportation be entirely over the line of one of the said railroad companies, or joint transportation over the lines of two or more companies; and on and after the said date it shall be unlawful for the said railroad companies, or any of them, to charge or collect a greater sum than two cents per mile for the transportation of passengers over the lines controlled and operated by them, respectively, except as otherwise allowed in this order, or from time to time, by the State Corporation Commission.

2. It is ordered, that a maximum rate of two and one-half cents per mile for the intra-state transportation of passengers be fixed and prescribed to go into effect on and after the first day of July, 1907, on the following divisions or branches, of the Southern Railway Company, which are now excepted from the operation of the maximum rate of two cents per mile hereinabove fixed.

Norfolk Division, extending form Pinner's Point to Danville, 204 miles, exclusive of so much of the said division as may be in the State of North Carolina;

Franklin Branch, extending from Franklin Junction to Rocky Mount, 37 miles;

Claremont Branch, extending from James River Junction to Claremont, 50 miles.

146 From and after the said date it shal- be unlawful for the Southern Railway Company to charge or collect a greater sum than two and one-half cents per mile for the intra-state transportation of passengers over these divisions, or branches, unless otherwise directed, or allowed by the Commission.

3. It is ordered, that on and after the first day of July, 1907, the following steam railroad companies, viz.:

Chesapeake-Western Railway,
Cumberland Valley and Martinsburg Railroad Company,
Danville and Western Railway Company,
Indian Creek and Pound River Railroad Company,
Marion and Rye Valley Railway Company,
Nelson and Albemarle Railway Company,
Valley Railroad Company of Virginia,
Virginia-Carolina Railway Company,
Virginia Southern Railroad Company,
Winchester and Potomac Railroad Company,
Winchester and Strasburg Railroad Company,
Norfolk and Southern Railway Company,

shall put into effect and observe a maximum rate of three cents per mile in the intra-state transportation of passengers in Virginia, and on and after the said date it shall be unlawful for the said railroad companies, or any of them, to charge or collect a greater sum than three cents per mile for the transportation of passengers over the lines controlled and operated by them, respectively, except as otherwise allowed from time to time by the State Corporation Commission.

4. It is ordered, that on and after the first day of July, 1907, the following steam railroad companies, viz.:

Big Sandy and Cumberland Railroad Company,
Black Mountain Railroad Company,
Interstate Railroad Company,
Lick Creek and Lake Erie Railroad Company,
Mt. Airy and Eastern Railway Company,
New River, Holston and Western Railroad Company,
Potomac, Fredericksburg and Piedmont Railroad Company,
147 Surry, Sussex and Southampton Railway Company,
Tidewater and Western Railroad Company,
Virginia Anthracite Coal and Railway Company,
Virginia and Kentucky Railway Company,
Wise Terminal Company,

shall put into effect and observe a maximum rate of three and one-half cents per mile in the intra-state transportation of passengers in Virginia, and on and after the said date it shall be unlawful for the said railroad companies, or any of them, to charge or collect a greater sum than three and one-half cents per mile for the transpor-

tation of passengers over the lines controlled and operated by them, respectively, except as otherwise allowed from time to time by the State Corporation Commission.

5. It is further ordered, that in applying the foregoing maximum passenger rates prescribed for the several railroads in Virginia, the railroad companies may charge and collect a minimum rate of ten cents per passenger for any single haul.

6. The payment of fares subject to the maximum rate herein prescribed shall entitle the passenger to the same transportation of baggage as now allowed by the carriers under, and in connection with the present rates and no steam railroad company operating in Virginia shall change or alter the rules governing the rights of passengers with respect to the transportation of baggage in Virginia, without the consent of the Commission first obtained.

7. Steam railroad companies operating in Virginia may charge and collect in addition to regular ticket rates the fixed sum of ten cents from all cash fare passengers who had been afforded reasonable opportunity for purchasing ticket before boarding train: provided that the conductor shall in all such cases deliver to passengers a receipt for the amount collected, redeemable at any ticket office of the company within thirty days from date of issue.

It is ordered, that the clerk of the Commission do forth-
148 with publish this order in full in one of the newspapers of general circulation published in the City of Richmond, once a week for four consecutive weeks, as required by law.

STATE OF VIRGINIA,
City of Richmond, To-wit:

I, Richard T. Wilson, clerk of the State Corporation Commission, do hereby certify that the foregoing is a true transcript from the judicial order book of the State Corporation Commission, of all orders entered in that certain proceeding lately depending before the said Commission under the name and style of:

Commonwealth of Virginia, at the relation of the State Corporation Commission,
v.
Steam Railroad Companies.

and designated in this office as judicial record 99.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the State Corporation Commission this 25th day of June, 1907.

R. T. WILSON, *Clerk.*

[Seal of the State Corporation Commission of Virginia.]

149 This day, R. T. Wilson, clerk of the State Corporation Commission of Virginia, to me personally known, appeared in person before me, the undersigned, a notary public in and for the City of Richmond, in the State of Virginia, and, before me, in my said city, subscribed and made oath to the foregoing certificate.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal this, the 25th day of June, 1907.

[NOTARIAL SEAL.] JNO. S. EGGLESTON,
Notary Public.

150 *Opinion Referred to in Foregoing Order.*

Passenger Rate Case.

COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION
vs.
STEAM RAILROAD COMPANIES.

In the Matter of Fixing a Maximum Passenger Rate.

Conclusions of the Commission.

Relative to the proceedings to be observed by the State Corporation Commission before it passes upon the reasonableness of any rate which it proposes to put into effect, it is provided in section 156*b* of the Constitution of Virginia, as follows:

tion Commission before it passes upon the reasonableness of any rate which it proposes to put into effect, it is provided in section 156b of the Constitution of Virginia, as follows:

"Before the commission shall prescribe or fix any rate, charge or classification of traffic, and before it shall make any order, rule, regulation or requirement directed against any one or more companies by name, the company, or companies to be affected by such rate, charge, classification, order, rule, regulation or requirement shall first be given, by the commission, at least ten days' notice of the time and place, when and where the contemplated action in the premises will be considered and disposed of, and shall be afforded a reasonable opportunity to introduce evidence and to be heard thereon, to the end that justice may be done, and shall have
151 process to enforce the attendance of witnesses; and before the commission shall make or prescribe any general order, rule, regulation or requirement, not directed against any specific company or companies by name, the contemplated general order, rule, regulation or requirement shall first be published in substance, not less than once a week for four consecutive weeks in one or more of the newspapers of general circulation published in the city of Richmond, Virginia, together with notice of the time and place, when and where the commission will hear any objections which may be urged by any person interested, against the proposed order, rule, regulation or requirement; and every such general order, rule, regulation or requirement, made by the commission shall be published at length, for the time and in the manner above specified, before it shall go into effect, and shall also as long as it remains in force, be published in each subsequent annual report of the commission."

Proceeding in conformity with the foregoing provision of the organic law of the State, the commission, on the 31st day of July, 1906, issued the following notice:

Notice.

Offices of the State Corporation Commission.

RICHMOND, VA., *31st Day of July*, 1906.

To the several steam railroad companies doing business in Virginia, and all persons interested:

Take notice that the State Corporation Commission will, in the city of Richmond, on Thursday, the first day of November, 1906, at 12 o'clock noon, in accordance with authority conferred by the Constitution of Virginia and the statutes enacted by the General Assembly of Virginia pursuant thereto, hear and consider any objections which may be urged against a rule, regulation, order
152 or requirement of the commission fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers over the line of any railroad company in this State, operated by steam, between points within the State of Virginia, said maximum rate to be observed whether the transportation be entirely over the line of one railroad company, or joint transportation over the lines of two or more companies; and whether the contract for transportation of a passenger, or passengers be evidenced by an ordinary ticket between stations, by a mileage book, or otherwise; the commission to have, as authorized by law, the power and authority, from time to time, and as often as circumstances may require, to change or revise the rate, or by rules, regulations and requirements to provide for the more convenient and expedient putting into effect and proper observance of said maximum rate. At the said hearing and consideration of the said maximum rate of two cents per mile, the method, time and extent of promulgating and putting into effect of the same will be heard and determined by the commission, to the end that a maximum rate for passenger transportation may be put into effect and be made applicable to all steam railroad companies doing business in Virginia, and be properly observed by them in the transportation of passengers.

BEVERLEY T. CRUMP, *Chairman*.
H. C. STUART.
JOSEPH E. WILLARD,
Commissioners.

This notice was published once a week for four consecutive weeks in *The Times-Dispatch*, a newspaper of general circulation published in the city of Richmond.

In accordance with the foregoing notice, the leading railroad companies doing business in the State of Virginia appeared be-
153 fore the commission on the first day of November, 1906, and filed written, or printed, answers, in which were set out in

detail the objections which they desired to urge against the proposed maximum passenger rate of two cents per mile. Following upon the filing of these answers, testimony was introduced before the commission from time to time, and all the issues arising in these proceedings were finally submitted to the commission for its determination on the 29th day of March, 1907.

The commission has given careful consideration to the objections made by the railroad companies involving solely questions of law, and to the most voluminous and detailed testimony adduced before it.

We have first to deal with two preliminary questions of law which are urged by the defendant railroad companies in their answers, and which must be first disposed of, as they challenge the right of the commission to take any action in this proceeding.

It is contended, in the first place, that the provisions of article XII of the Constitution of Virginia, providing for the creation, functions, duties and powers of the State Corporation Commission, are in violation of the fourteenth amendment to the Constitution of the United States, in that those provisions of the Constitution of Virginia, in their execution, deprive the defendant railroad companies of their properties without due process of law, and deny to them the equal protection of the laws. It is contended, in the next place, that as to all the defendant railroad companies whose charters were granted by the State of Virginia prior to the adoption of the new Constitution in July, 1902, there existed a contract between the State and the said railroad companies whereby it was agreed that the State would not undertake to prescribe the tolls or charges upon the said railroad companies, and that the provisions of the Constitution and laws of the State of Virginia conferring upon the State Corporation Commission power to prescribe rates impaired the obligation of that contract, and that hence the commission has no power to fix or prescribe a maximum passenger rate in this proceeding.

154 The first objection above mentioned is based upon the fact that the Constitution of the State, in creating the State Corporation Commission, has conferred upon it judicial, executive and legislative powers; that the commission has authority to consider, prescribe and put into effect rates to be charged by the railroads, and has likewise power, as a judicial tribunal, to pass upon the reasonableness of the rates so proposed by it. The position is taken that a tribunal thus created is unlike the regular courts to which other persons in the State may submit their controversies, and that, in being required to come before such a tribunal, they are denied due process of law, and likewise equal protection of the laws.

It is unnecessary for the commission to consider this objection at length, as it has been recently passed upon by the Supreme Court of Appeals of Virginia. In the case of *Winchester and Strasburg R. R. Co. vs. Town of Strasburg*, decided by the Supreme Court of Appeals of Virginia on December 6, 1906, on appeal from the commission, this question was discussed at length by the court, and the provisions of the Constitution were upheld as valid, and not in violation of the fourteenth amendment to the Constitution of the United States, al-

though the commission had clearly conferred upon it, to a certain extent, judicial functions as well as legislative and administrative authority.

The second objection urged by the defendant railroad companies as a matter of law is based upon certain provisions of the statutory law of Virginia, which have been in effect for many years, and which are now contained in sections 1202, 1240 and 1242 of the Code of Virginia of 1887. These sections of the Code are portions of the general railroad law of the State. It is provided in section 1240 that the charter of every company, which is governed by an act passed in March, 1837, prescribing certain general regulations for the incorporation of railroad companies, and the charter of every company theretofore or thereafter incorporated, which shall be governed by that chapter, "may be altered, modified, or repealed by any future legislature as may seem to it proper, except that no law
155 shall be passed for taking from a company its works or property without making to it just compensation, or for changing its tolls without its assent, in any other cases than such as are specially provided for in this chapter." In section 1242 it is provided that laws may be passed reducing the tolls of a railroad company when its net profits shall be such that dividends might be declared out of such net profits exceeding the rate of fifteen per centum per annum on the capital stock invested; but that no law shall reduce the tolls so as to prevent dividends at fifteen per centum per annum within thirty years from the time when the first dividends of profits were declared, or so as to prevent dividends of twelve per centum per annum after the said thirty years, and before fifty years from the same time, or so as to prevent dividends of ten per centum per annum after the said fifty years.

It is alleged in the several answers that the railroad companies have not at any time earned such net profits as would enable them to declare the respective dividends mentioned in this statute. It is insisted that therefore, the State has contracted with the railroad companies that no laws should be passed changing their tolls or charges without their assent until such dividends as are contemplated by the statute have been earned. The question before the commission, therefore, is whether such a contract exists, and whether the present provisions of the Constitution of Virginia and the statutes enacted in pursuance thereof constitute an impairment of the obligation of that contract.

We do not deem it necessary to discuss this question at length, but content ourselves with referring to a recent case decided by the Circuit Court of the United States for the Western District of Texas. See *Houston and T. C. R. R. Co. vs. Storey*, 149 Fed. Rep. 499. In that case a bill was filed by the railroad companies to enjoin the enforcement of rates established by the Railroad Commission of Texas. The railroad companies alleged that there existed a contract between them and the State of Texas which precluded the State and
156 the railroad commission from prescribing the rates in question. The section of the Texas statutes relied upon was as follows:

"It shall be lawful for the legislature at any time to prescribe the rates to be charged for the transportation of persons and property upon any such road, should they be deemed too high, and may exercise the same power every ten years: provided, that no reduction shall be made unless the net profit of the company for the previous ten years, the expenditures of the company being *bona fide* and not with a view to defeat the operation of this section, shall amount to a sum equal to twelve per centum per annum upon its capital stock, and then so as not to reduce the future probable profits below said per centum."

The question of the existence of this contract arose upon a demurrer to the bill, and is not discussed at length by the court. The court refers to *L. & N. R. R. Co. vs. Kentucky*, 183 U. S. 503; *San Antonio Traction Company vs. Altgeld*, 200 U. S. 304, and *Chicago, &c., R. R. Co. vs. Minnesota*, 134 U. S. 455, and holds, upon the authority of these cases, that there was nothing in the charter of any of the companies which expressly or by implication exempted them from liability to future legislation as to the prescribing of rates, and hence no contract between the State and the railroads, respectively, arose; that all the companies, whether chartered by special act of the legislature or under the general laws of the State, took their charters subject to the general law, and to such changes as might be made in the general law, and subject to future constitutional provisions and future general legislation.

In *Louisville and Nashville R. R. Co. vs. Kentucky*, one of the cases relied upon by the Circuit Court, the Supreme Court of the United States says:

"In the absence, then, of any express prior contract between the State and the company exempting the latter from future con-
157 stitutional enactments, and without conceding that even such a contract would avail to relieve the company from constitutional changes in the exercise of the general police power of the State, it is sufficient to say that we do not find in section 218 of the Constitution of Kentucky any impairment of an existing contract between the State and the plaintiff in error."

It will be seen, therefore, that the Supreme Court of the United States does not concede the validity of a contract of this character between the State and a railroad company. This is based upon the general principle that one legislature cannot make such a contract as will prevent subsequent legislatures, or a constitutional convention from the exercise of the police power. This is a question of great importance and interest which it is unnecessary for us to allude to further than to say that, in the present state of the law, this commission must necessarily uphold the right of the State of Virginia to exercise unfettered the police power inherently residing in the State government. An examination of the charters of the several railroad companies which have appeared in this proceeding leads the commission to the conclusion that there is no language in any of them by which a contract, either expressly or impliedly, could be held to have been made with the State whereby the State had relinquished its governmental power to fix and prescribe reasonable

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rates to be charged by the railroads, with the possible exception of the charter of the Richmond, Fredericksburg and Potomac Railroad Company. The charter of this company is a very old charter, and it has been held by our State court that, under this charter, the property of the railroad company is exempt from taxation. The power of taxation, however, and the right of the government to prescribe rates rest upon different principles.

The commission overrules the objection that the rate-making power as exercised by the commission in this proceeding constitutes an impairment of the obligation of a contract between the State and the railroad companies as to the Richmond, Fredericksburg and Potomac Railroad Company.

158 It is also to be observed that the charters of some of the defendant railroad companies fall within the scope of the decision of the Supreme Court of the United States in *Norfolk and Western Railroad Company vs. Pendleton*, 156 U. S. 667.

The further objection is made that the adoption and promulgation of the proposed maximum passenger rate would, because many interstate passenger rates are made, and necessarily made, on combinations of locals, or by use of the local rate as a factor, necessarily disturb and regulate the interstate commerce of railroads to such an extent as to come within the purview of the clause of the Federal Constitution relative to interstate commerce. The commission is of the opinion that this objection is clearly untenable.

The defendant railroad companies maintain that a maximum passenger rate of two cents per mile in Virginia would be unreasonable, or confiscatory. It has been strongly contended before the commission, as to each of the railroads involved, that a lowering of the maximum passenger rate in effect upon each of those roads would so affect their earnings as to make the lower maximum passenger rate unreasonable and unjust.

At the same time that the commission has been considering the question of a maximum passenger rate, it has also had before it proceedings having for their object the promulgation and putting into effect of an uniform Virginia freight classification, and freight tariffs thereunder. These two proceedings are designated, respectively, as the passenger rate case and the freight rate case. The freight rate case was taken up first, and by agreement any of the testimony adduced before the commission in that proceeding may be regarded also as testimony in the passenger rate case. So that in passing upon this matter of a maximum passenger rate, the commission will consider the records in both cases and all testimony, exhibits, facts and statements contained in both records, so far as pertinent.

The testimony taken before the commission as to the organization, the financial conditions, the earnings, and the present and future economic conditions of each of the roads appearing before the commission, has been most voluminous, and the commission

159 cannot undertake to analyze and tabulate the testimony in detail. The commission desires, however, before referring to the evidence, to examine briefly the underlying principles, so far as they have been settled, by which the reasonableness or confiscatory character of a rate is to be judged.

By the Constitution and laws of Virginia, the State Corporation Commission is vested with the legislative authority to make a rate. It is settled by statute and by adjudication that the commission has the right, and is constrained by the provisions of our Constitution, to pass upon the judicial question of whether or not the rate proposed by it is reasonable. Under the terms of the Constitution of Virginia, full provision is made for notice to the railroad companies, and every opportunity is given to test before the commission the question of the reasonableness of the proposed rate. There can be no question but that due process of law is afforded to the railroad companies under the procedure by which the State Corporation Commission is bound, and, therefore, the objection sustained in *Chicago, Milwaukee and St. Paul Railroad Company vs. Minnesota,* 134 U. S., 418, does not apply to the method of this commission in prescribing and putting into effect a rate. This commission is required, sitting as a court, to pass upon the judicial question of whether or not the rate proposed by it is reasonable, and from its judgment on that question an appeal is given from it, as a judicial tribunal, to the Supreme Court of Appeals of the State. We are required, therefore, to determine whether or not a maximum passenger rate of two cents per mile in Virginia, in the intra-state business of the railroads doing business in the State, is reasonable, and if not, what maximum passenger rate is reasonable as to all of the roads, or as to the roads placed in several different classes. We must endeavor to determine briefly what are the principles by which the reasonableness of a rate is to be judged, and what the term reasonableness, applied to rates, means as a judicial question.

As we shall see, it is somewhat of a misconception to speak of the rate itself as being reasonable, because the reasonableness of
160 the rate depends in the end upon whether or not the rate is so unreasonably low as to constitute a violation of the rights secured to the railroad by the fourteenth amendment to the Constitution of the United States.

Reduced to its proper analysis, the defense of the railroad companies rests upon their allegation that the maximum rate proposed in this proceeding would so reduce their earnings as to deprive them of a reasonable income from their property without just compensation, and that to so deprive them of a reasonable income without compensation is to deprive them of due process of law within the extended meaning of that term as used in the fourteenth amendment; and that they are denied the equal protection of the laws because they are deprived of a reasonable income from their property without compensation, while other persons receive compensation for property appropriated by the State. The argument is that, to deprive the railroad of a reasonable income from its property, is the same as taking property itself, and this would seem to be true. An unreasonable rate is such a rate as is calculated to reduce the railroad earnings below the point of reasonableness. The term reasonableness, therefore, in the end, applies rather to the earnings of the railroad than to the rate itself. Understood as above stated, it is very common and natural to speak of the rate itself as being reasonable or unreasonable, and is a short method of stating the question as to

whether or not the rate will unreasonably reduce the earnings of the railroad company.

What are the general considerations by which the commission should be guided in determining, from the facts before it, whether or not a maximum passenger rate of two cents per mile will unreasonably reduce the earnings of the railroads and so take their property without just compensation, and deny them the equal protection of the laws?

It is impossible to answer this question briefly, and it is equally impossible to answer it clearly and completely. Being a question arising under the Constitution of the United States, the decisions of the Supreme Court of the United States should be looked to
161 as controlling. Quite a large number of cases have now been decided by that supreme tribunal of the country bearing upon the reasonableness or confiscatory nature of rates prescribed by State legislatures, or by State commissions. A rate which is unreasonable is often termed to be confiscatory, because, if it takes the property of the railroad without compensation, it is in the nature of confiscation. While the doctrines which should control and guide a judicial tribunal in passing upon the question as to whether a proposed rate will reduce the earnings of a railroad unreasonably cannot be said to have been clearly enunciated and well settled, yet the Supreme Court of the United States has, in several cases, been called upon to deal directly with these doctrines. Without referring to all of the cases which have been before that tribunal, we think it may be said that the following are the leading cases in the sense that they mark the several *stadia* in the development of these doctrines:

Chicago, Milwaukee and St. Paul Railroad vs. Minnesota, 134 U. S. 418; *Reagan vs. Farmers' Loan and Trust Company*, 154 U. S. 362; *Covington and Lexington Turnpike Road Company vs. Sanford*, 164 U. S. 578; *Smyth vs. Ames*, 169 U. S. 466; *San Diego Land and Town Company vs. National City*, 174 U. S. 739; *Minneapolis and St. Louis Railway Company vs. Minnesota*, 186 U. S. 257.

These cases refer to the intermediate decisions in such a way as to give a very fair presentation of the progress of the court-made law, and of the present condition of the doctrines enunciated by the court on these subjects.

From the cases we deduce the following general principles:

1. The rate enacted by the legislature, or otherwise proposed by the State, stands, as other legislation or action of a State, as valid and constitutional, and hence the burden is upon the railroad company of showing that the rate so enacted or proposed will reduce its earnings to a point which amounts to the confiscation of its property, or to the taking of its property without compensation. *Atlantic Coast Line Railroad vs. Florida*, 203 U. S. 256.

162 2. The railroad company may show that the proposed rate, when applied to its business, will not yield it a reasonable return on the fair value of the property used in the services for which the rate is paid. The return or profit which the railroad company is entitled to must not, therefore, be reckoned upon the capitalization of the company, but upon the reasonable value, or fair value, of the property used by the railroad for the public convenience.

In other words, in considering this question, the real value of the property must be looked to, and not a fictitious value based upon the issuance of securities.

3. The Supreme Court of the United States has repeatedly declared that the railroad's right to earnings must also be limited by considerations relative to the rights of the public. This has been declared in nearly all of the cases above named, and in others. It is held that rates must be just, both to the public and the railroad. Thus, in the Reagan cases, it was stated:

"It is unnecessary to decide, and we do not wish to be understood as laying down as an absolute rule, that in every case a failure to produce some profit to those who have invested their money in the building of a road is conclusive that the tariff is unjust and unreasonable."

Again, Justice Harlan, speaking for the court in the Smyth case, said, with reference to the contention that rates ought to permit the payment of dividends as well as of expenses:

"In our opinion, the broad proposition advanced by counsel involves some misconception of the relations between the public and a railroad corporation, is unsound in that it practically excludes from consideration the fair value of the property used, omits altogether any consideration of the right of the public to be exempted from unreasonable exactions, and makes the interests of a corporation maintaining a public highway the sole test in determining
163 whether the rates established by or for it are such as may be rightfully prescribed as between it and the public."

The court in other cases has made numerous utterances to the same effect.

4. Other circumstances and conditions recognized by the court as important in determining the reasonableness of a rate, or of a railroad's income are economic in their nature, as they pertain to the industrial condition of the country through which the road is built, and other such considerations. In the Minnesota case, reported in 186 U. S. 268, it is suggested that a case may occur in which the condition of the country is such that rates high enough to pay operating expenses would be exorbitant, and would not be justified. While this statement was made in the course of the opinion in a general way, and rather as *obiter dictum*, it shows what a wide scope of consideration the court has in determining questions of this character. In the Reagan cases it was held that, if the road was unwisely built in localities where there is not sufficient business to sustain the road, the public are entitled to reasonable rates, and should not be made to suffer for the bad judgment of the railroad builders, although those rates may not yield earnings sufficient to remunerate the investors. In the Covington case it was held that, although the competition of new lines may reduce the business of the older lines, still the older line would not be justified in making rates unjust to shippers and the public, but must be content with smaller earnings. In the Smyth case the court was called upon to determine the reasonableness of a proposed general freight schedule or tariff of rates. The opinion of the court is based very largely upon tabulated statements showing the average reduction in gross earnings which would

follow from an application of the proposed new freight tariff to the business of the road during the three years preceding. To what extent the court had before it the facts relative to the economic conditions of the country and probable earnings of the roads in
164 the future does not appear. It would rather seem that the evidence, if any, on these questions was very meager, so that the court would not speculate as to the future.

The case this commission is now dealing with relates altogether to a general maximum passenger rate, while in the Smyth case the questions dealt with by the court were greatly complicated by the application of an entirely new freight tariff to the business of the several roads in Minnesota. It is clearly shown in our case that a reduction in passenger rates will produce increased travel, so that the application of the proposed maximum passenger rate to the past business of the companies does not constitute a test which absolutely determines the result of the reduction in the maximum passenger rate. It is manifest that in the Smyth case the court did not have before it the full evidence on this point which has been adduced before the commission. Increased business following a reduction in rates is a circumstance which necessarily has more weight in considering a passenger rate than in considering a system of freight rates; while freight traffic may be somewhat stimulated by a reduction of rates, yet the great bulk of it is controlled by general industrial conditions which apply with a less degree of force to passenger travel.

5. Another matter which is allowed consideration is the character of the administration of the road. If the organization and operation of the road has not been business-like and economical and fair, the company's objection to the rates of the legislature, or of the commission is greatly weakened. In other words, all the expenditures of the company of every character charged against the gross earnings may be carefully examined, analyzed and criticised, as well as all the items coming under the general head of operating expenses. In the Reagan cases it was declared that, if there has been waste in the management of the road, if the company has been paying enormous salaries or has been indulging in unjust discriminations, resulting in general loss, it cannot fairly object to a reduction in its rates. In the Wellman case, 143 U. S. 345, the court declared that they
165 should be fully advised as to what had been done with the earnings of the road, "for if so advised, it might clearly appear that a prudent and honest management would, even under the rates prescribed, secure to the bondholders their interest, and to the stockholders reasonable dividends."

The foregoing are some of the leading circumstances and considerations by which we are to be guided in determining what maximum passenger rate would be a reasonable rate to apply to the railroads in Virginia in their intra-state traffic. To undertake to enumerate in great detail all the principles applicable to the rate cases as enunciated by the Supreme Court of the United States would require a most elaborate analysis of the various cases decided by that court, which would extend this opinion far beyond its proper limits. While reasonableness of the earnings of the railroad, which consti-

tutes the crucial test in determining the validity of the proposed rate, must be judged by the principles so far laid down in the adjudications, yet in the end each case must depend upon its own circumstances. As was stated in the San Diego Land and Town Company case, quoting from the Covington case,

"each case must depend upon its special facts; and when a court, without assuming itself to prescribe rates, is required to determine whether the rates prescribed by the legislature for a corporation controlling a public highway are, as an entirety, so unjust as to destroy the value of its property for all the purposes for which it was acquired, its duty is to take into consideration the interests both of the public and of the owner of the property, together with all other circumstances that are fairly to be considered in determining whether the legislature has, under the guise of regulating the rates, exceeded its constitutional authority, and practically deprived the owner of property without due process of law."

The commission recognizes clearly the general principle established in *Smyth vs. Ames*, which seems to be now fairly well
166 settled; that is, that the railroad company is entitled to a fair return on the reasonable value of its property. What is the reasonable value of the property upon which the railroad company is entitled to the fair return or earnings is to be determined in the light of the general considerations above mentioned, and by all the principles so far laid down by the courts in considering these questions. In *Smyth vs. Ames*, it is stated that in determining the value of the property used in the service of the public, and upon which a return is to be estimated, the following circumstances may be considered:

(1) The original cost of construction;

(2) The present, as compared with the original, cost of construction;

(3) The amount expended in permanent improvements;

(4) The amount, in market value, of the stocks and bonds issued by the corporation;

(5) The probable earning capacity of the road under the proposed rates;

(6) The amount of operating expenses; and

(7) Other matters which may be properly considered, according to the facts in each case.

The last consideration amounts to saying that each case must be judged by its own facts.

It is almost certain that the evidence before the commission presents every possible fact and consideration bearing upon the reasonableness of a maximum passenger rate of two cents per mile more fully and extensively than any of the cases which have been before the Supreme Court of the United States. After listening for several months with great care to the testimony adduced before the commission, and upon careful scrutiny of all facts appearing from the testimony, the tabulated statements and all other data and exhibits filed before the commission, we are of opinion that it will not un-

reasonably reduce the intra-state earnings of railroads in Virginia calculated upon a proper basis, should the commission put
167 into effect a maximum passenger rate less than the prevailing maximum rate, which, as to nearly all the roads, is three cents per mile.

The investigation on which the conclusions of the commission are based was perhaps the most extensive and exhaustive in its scope of any yet undertaken by rate-making bodies. The record in the freight rate cases, covering several thousand pages of typewritten matter, and the exhaustive record in the passenger rate cases, are considered together in so far as either of these records throws light on the subject before us. While the evidence has been carefully considered in its applicability to each individual company and its peculiar conditions, regarded separately, yet we do not deem it necessary or practicable to review all the evidence with the same detail in this paper, but will herein confine ourselves to an application to the evidence of those general principles which the courts have held should control the judgment and discretion of a rate-making body, deducing therefrom such conclusions as are fair, just and reasonable to the several groups of roads and dealing separately with a company only when some peculiar fact or condition differentiates it from the others of the group to which it otherwise belongs.

Proceeding along this line, we recognize not only the binding force, but the justice of the general principle that a carrier has the right to earn its operating expenses, and a fair return upon a fair value of the property used in the service. In order to reach a result in this case which shall conform to this principle, a number of facts must be, as far as possible, ascertained and determined, among the most important of which are:

(1) The gross earnings of the carrier on all its Virginia business, both inter and intra-state;

(2) The expense of conducting such business;

(3) The gross earnings derived from its Virginia intra-state business;

(4) The expense of conducting such purely intra-state Virginia business;

(5) The fair value of the carrier's property used by it in all its Virginia business;

168 (6) The fair value of the carrier's property used by it in its intra-state Virginia business;

(7) A fair and reasonable margin of profit which the carrier should be allowed to earn upon its intra-state Virginia business.

It is manifestly impossible, in the very nature of the case, to ascertain exactly any one (except the third) of the seven matters above enumerated; but the testimony submitted by the defendant carriers in this proceeding, and the facts brought out in cross-examination by members of the Commission and by counsel for the Commonwealth enabled all those matters to be ascertained with sufficient practical accuracy for the purposes of this proceeding.

It may be proper to call attention at this point to the fact that, while the roads generally have stated their passenger *earnings* sepa-

rately from their freight and other earnings, yet they have, with perhaps one exception, failed entirely to make any effort at a division between the *expense* of conducting passenger business and that of conducting freight, or other business. Thus we are without such information as will enable us to determine with accuracy the separate net profits of passenger, freight, mail, express and miscellaneous business, respectively. It is, therefore, necessary, in approaching a solution of the question before us, that we consider the earnings of the roads on all Virginia business of every kind on the one side, and the expense incurred in conducting all Virginia business of every kind on the other.

Taking up now the first of the said seven principal matters to be ascertained, namely, the gross earnings of the carrier on all its Virginia business, both inter-state and intra-state, it will be found that the evidence supplying this information, with reasonable accuracy, is furnished not only by the testimony of witnesses adduced in this proceeding, but by the operating reports of the several companies on file in the office of this Commission, and which are made a part of the record in these proceedings.

169 The establishment of the second principal fact above mentioned, viz: the expense of conducting the carrier's entire Virginia business—both inter- and intra-state—has been attempted by all the roads with varying accuracy, though every company has included in its operating expenses items which are not properly so classified.

The third matter, as to earnings derived from all Virginia intra-state traffic, has been satisfactorily fixed, in the case of all the roads appearing in this proceeding by the testimony and statistics in the evidence; and some of the roads have undertaken to state separately their earnings from intra-state passengers and from intra-state freight.

We proceed, therefore, without difficulty until we reach the fourth principal matter, which is as to the expense of conducting purely intra-state business, freight, mail, express, passenger and miscellaneous. A great mass of testimony was submitted by several of the carriers in an effort to show that the cost of conducting intra-state business was materially greater than that of conducting all business, and therefore still greater than that of conducting inter-state business. Some of the roads claimed that this excess of expense on intra-state business was not less than fifteen per cent. of the expense of conducting all business of the system; others claimed that it cost not less than fifteen cents more to earn a dollar on intra-state traffic than on inter-state traffic. Some of the roads claimed that the excess cost was greater than this. It was contended on behalf of the roads that the Supreme Court of the United States had, in the case of *Smyth vs. Ames*, 169 U. S., page 466, established as a matter of law a particular ratio between the cost of different kinds of railroad business. That case, however, does not sustain any such construction, and the evidence in this case fails to show that the intra-state Virginia business of the railroads yields a smaller percentage of profit than does their inter-state business; and the Commission, upon the whole evidence, is of opinion that it is not so.

The argument advanced in support of the opposing theory is largely based upon the assumption that local traffic and intra-
170 state traffic are interchangeable terms; whereas, as a matter of fact, such is not the case, but, on the contrary, a large amount of intra-state traffic is carried by what might be termed "through movement," while a large amount of inter-state traffic, in whole or in part, by what might be termed "local movement."

It has been held by the Railroad Commission of Wisconsin, after an exhaustive investigation of the subject, that as much intra-state traffic is carried by through movement in that State as is carried by local movement, and that as much inter-state traffic is carried by local movement as by through movement. The evidence in this case shows that the same is very largely true as to Virginia traffic; hence we conclude that any evidence based upon the theory that intra-state traffic is approximately all local, or that inter-state traffic is approximately all through, is necessarily misleading.

It may be admitted, however, that a large proportion of intra-state traffic takes local movement, and is subject, therefore, to the relative high expense of short haul movement; but when we consider that the local or short haul rate is relatively much greater per ton per mile on a purely mileage basis than the through long haul rate, and when to this is added the further fact that the local movements are usually conducted between small points unaffected by competition, while the through movements are usually between large points, and, therefore, more or less influenced by competition, we must see that the excess of the local over the through rate becomes still greater. When we consider these things, it is apparent that the difference in the rate in the two cases is certainly large enough to offset fully any probable difference in the cost of handling and transporting the two classes of traffic. Indeed, the existing short haul rates, which, as just stated, are rarely affected by competition, have always been fixed by the free and voluntary action of the carriers themselves, without restraint, and with a view to covering fully any excess cost which may be incident to traffic moving under these rates; and an examination of the rates applicable to short hauls will show that the traffic departments of the carriers have not been unmindful of
171 the difference between the cost of the short haul local movements on the one side, and the long through movements on the other, even though both movements are performed within the State. As illustrative of this, the testimony of Mr. Coxe, a witness of the Norfolk and Western Railway, shows that the average length of their through hauls was 230 miles, and the average length of their local hauls 68 miles; and the existing tariffs of that road show that the average charge per ton per mile under a 68-mile haul under the class rates is more than double the average charge per ton per mile on a 230-mile haul; and the same comparison when made between commodity rates illustrates the same principle. This is practically true of all the roads. From the evidence in these proceedings and from the considerations aforesaid, the commission finds that the profitableness of conducting intra-state freight traffic is proportionately not materially, if at all, less than the profitableness of conducting inter-state freight traffic.

So much for the freight traffic; but when we consider the passenger, mail, express and miscellaneous business of the roads, the case is much stronger. As a rule, the shorter hauls of passengers are conducted on the regular ticket rates, which are the higher rates; but the assumed additional cost of conducting local *freight* traffic, growing out of the fact that a great part of it must be handled in and out of cars and stations, will not apply to *passenger* traffic, since passengers handle themselves. In addition to this, there are many expenses connected with the through passenger service that are not connected with the local passenger service, such as vastly more expensive train equipment, the maintenance of passenger soliciting offices off the line of the road, the maintenance of a very much higher class of service, &c., &c.

We find that a large amount of intra-state passenger traffic is conducted on through trains, which are claimed to move at a minimum cost per passenger per mile. We find also that a considerable volume of inter-state passenger traffic is conducted on local trains, which are claimed to move at a higher cost per passenger per mile.

From these and other considerations, we cannot escape the
172 conclusion that the Virginia intra-state passenger traffic of each road involved in these proceedings is, in the aggregate, fully as profitable, in proportion, to such road as is its inter-state passenger traffic. As to the mail and express business of the railroads, the evidence is clear, and from the nature of the business it is manifest that the local mail and express business, so far as the railroad company is concerned, costs no more than does the through mail and express business,—the rates being higher, however, on local than on the through, it follows that the local mail and express business of the roads is more profitable than the through.

Finally, the miscellaneous earnings of the road, consisting chiefly of such things as rentals, demurrage, switching, &c., are all purely local, and not, strictly speaking, items of transportation at all, but, in the matter of profitableness, this branch of the road's business is the same whether the traffic upon or in connection with which it is performed, is local or through.

Having seen that, all things considered, the profitableness of intra-state freight traffic in Virginia is proportionately not materially, if at all, less than that of inter-state Virginia traffic; that the profitableness of Virginia intra-state passenger, mail, express and miscellaneous business is proportionately not materially, if at all, less than that of inter-state Virginia passenger, mail, express and miscellaneous business, it follows that the profitableness of the *whole* Virginia intra-state business is proportionately not materially, if at all, less than that of the whole Virginia inter-state and intra-state business combined.

This conclusion is strengthened by consideration of the fact that the great bulk of the inter-state traffic in Virginia is of such character as is moved by the heaviest power and equipment, representing the heaviest burden, and which imposes the necessity for large expenditure of money on road-bed, track, bridges and terminals, thereby increasing the investment in property far beyond the figure which

would be necessary if all traffic were of the same character as average intra-state traffic. To this may be added the fact that the cost of the heavier power and equipment used in transporting average inter-
state traffic is also greatly in excess of the cost of power
173 necessary to, or actually used in, the movement of average
intra-state traffic, to say nothing of the wear and tear on the rails and on the road-bed incident to the movement of heavier inter-state traffic.

Having thus compared the profitableness of Virginia intra-state business with that of Virginia inter-state business, and having seen that there is no material difference in the comparative profitableness of the two, it is plain that the entire operating expense of doing all business in Virginia should be apportioned between inter- and intra-state business, in the proportion which those branches of the road's business bear to each other in amount—that is to say, in the proportion which the gross earnings from inter-state business bears to the gross earnings from intra-state business: and since the intra-state Virginia business contains a larger proportion of short hauls than does the inter-state Virginia business, it follows that the amount of the road's plant—railroad and equipment—employed in earning one dollar of intra-state gross revenue is certainly not more—and is probably materially less—than that used in earning one dollar of Virginia inter-state revenue.

From these considerations it follows that the percentage of the entire expense of all Virginia business which Virginia intra-state business should bear, and the percentage of the entire property of the company employed in its Virginia business, upon which the intra-state Virginia business should be required to yield a fair return, is the same percentage which the gross earnings of the intra-state Virginia business bears to the gross earnings from all the Virginia business. When it is considered that the intra-state and inter-state business of the roads are inextricably mingled, being carried on by the same employees, at the same time, with the same plant and instrumentalities, over the same parts of the road, often in the same train, and not infrequently in the same car—when these things are considered, it is believed that no more fair, just, reasonable and correct basis can be found upon which to apportion the common burden and earning requirements of the whole business between the inter-state and intra-state branches thereof, than the basis above in-
dicated, to-wit, that of gross earnings; and the Commission,
174 from a long and painstaking study of the facts and conditions,
is of the opinion that if this basis is unfair to either branch of the business it is to the intra-state branch.

With a view to the application of this principle of apportionment to some of the principal roads in Virginia, we take the following tables:

1. NORFOLK & WESTERN RAILWAY COMPANY.

Virginia.

Miles operated, 1,054.00 miles.	Year 1906. Per mile of road.
Freight revenue	$12,829 15
Other freight earnings	27 88
Total freight earnings	$12,857 03
Passenger revenue	$2,147 99
Other passenger earnings	408 41
Total passenger earnings	$2,556 40
Total gross earnings	15,413 43
Operating expenses:	
Maintenance of way and structures	$1,721 71
Maintenance of equipment	2,728 25
Conducting transportation	4,459 69
General expense	283 86
Total operating expenses	9,193 51
Net income from operation	6,219 92
Other income from operation	99 93
Total income from operation	$6,319 85
Taxes	440 17
Balance	5,879 68
175 Interest on bonds	1,649 29
Balance for stock	4,230 39
Dividends on stock	1,879 98
Surplus	$2,350 41

2. CHESAPEAKE & OHIO RAILWAY COMPANY.

Virginia.

Miles operated, 736.9 miles.	Year 1906. Per mile of road.
Freight revenue	$10,195 13
Total freight earnings	$10,195 13

Passenger revenue	2,344 56
Other passenger earnings	435 10
Total passenger earnings	$2,779 60
Total gross earnings	12,974 73
Operating expenses:	
Maintenance of way and structures	$1,373 35
Maintenance of equipment	2,338 09
Conducting transportation	3,899 57
General expenses	223 81
Total operating expenses	$7,834 82
Net income from operation	$5,139 91
Other income from operation	230 76
Total income from operation	$5,370 67
Taxes	437 34
Balance	$4,933 33
176 Interest on bonds	3,307 41
Balance for stock	$1,625 92
Dividends on stock	536 76
Surplus	$1,089 16

3. Atlantic Coast Line Railroad Company.

Virginia.

Miles operated, 137.54 miles.	Year 1906.
	Per mile of road.
Freight revenue	$11,968 96
Total freight earnings	11,968 96
Passenger revenue	2,544 74
Other passenger earnings	319 40
Total passenger earnings	$3,064 14
Total gross earnings	15,033 10
Operating expenses:	
Maintenance of way and structures	$2,161 00
Maintenance of equipment	1,966 64
Conducting transportation	5,651 09
General expenses	417 80
Total operating expenses	$10,196 53

Net income from operation	4,836 57
Other income from operation	623 08
Total income from operation	$5,459 65
Taxes	343 74
Balance	$5,115 91
177 Interest on bonds	1,009 71
Balance for stock	$4,106 20
Dividends on stock	646 59
Surplus	$3,459 61

4. Seaboard Air Line Railway.

Virginia.

Miles operated, 157.50.	Year 1906.
	Per mile of road.
Freight revenue	$8,670 70
Total freight earnings	8,670 70
Passenger revenue	1,238 88
Other passenger earnings	453 21
Total passenger earnings	$1,692 09
Total gross earnings	10,362 79
Operating expenses:	
Maintenance of way and structures	$1,020 15
Maintenance of equipment	1,231 65
Conducting transportation	3,882 61
General expenses	207 41
Total operating expenses	$6,341 82
Net income from operation	4,020 97
Other income from operation	78 04
Total income from operation	$4,099 01
Taxes	380 68
Balance	$3,718 33
Interest on bonds	1,076 11
Balance for stock	$2,642 22
178 Dividends on stock	
Surplus	$2,642 22

5. Southern Railway Company.

In Virginia.

Miles operated, 965.53.	Year 1906. Per mile of road.
Freight revenue	$4,246 10
Total freight earnings	4,246 10
Passenger revenue	2,503 50
Other passenger earnings	962 92
Total passenger earnings	$3,466 42
Total gross earnings	7,712 52
Operating expenses:	
Maintenance of equipment	1,083 69
Maintenance of way and structures	$1,082 65
Conducting transportation	2,595 02
General expenses	248 06
Total operating expenses	$5,009 33
Net income from operation	2,703 19
Other income from operation	183 21
Total income from operation	$2,886 40
Taxes	236 64
Balance	$2,649 76
Interest on bonds	1,393 86
Balance for stock	$1,255 90
Dividends on stock	601 26
Surplus	$654 64

179 6. Richmond, Fredericksburg and Potomac Railroad Company.

Miles operated, 83.20—all in Virginia.	Year 1906. Per mile of road.
Freight revenue	$12,331 87
Total freight earnings	$12,331 87
Passenger revenue	6,953 07
Other passenger revenue	1,927 28
Total passenger earnings	$8,880 35
Total gross earnings	21,212 22

Operating expenses:

Maintenance of way and structures	2,021 96
Maintenance of equipment	2,270 25
Conducting transportation	8,708 77
General expenses	560 28
Total operating expenses	$13,561 26
Net income from operation	$7,650 96
Other income from operation	
Total income from operation	$7,650 96
Taxes	10 86
Balance	$7,640 10
Interest on bonds	1,256 25
Balance for stock	6,383 85
Dividends on stock	3,171 16
Surplus	$3,212 69

180 7. WASHINGTON-SOUTHERN RAILWAY COMPANY.

In Virginia.

Miles operated, 33.83. Year 1906.

	Per mile of road.
Freight revenue	$14,559 14
Total freight earnings	14,559 14
Passenger revenue	6,015 26
Other passenger earnings	2,502 54
Total passenger earnings	$8,517 80
Total gross earnings	23,076 94

Operating expenses:

Maintenance of way and structures	$1,851 56
Maintenance of equipment	2,410 81
Conducting transportation	12,446 51
General expenses	547 27
Total operating expenses	$17,256 15

Net income from operation	5,820 79
Other income from operation	91 04
Total income from operation	$5,911 83
Taxes	524 34
Balance	5,387 49
Interest on bonds	4,456 24
Balance for stock	$931 25
Dividends on stock	2,177 21
Surplus	

181 8. NEW YORK, PHILADELPHIA & NORFOLK RAILROAD COMPANY.

In Virginia.

Miles operated in Virginia, 95.00.

	Year 1906. Per mile of road.
Freight revenue	$13,227 28
Other freight earnings	193 44
Total freight earnings	$13,420 72
Passenger revenue	2,424 11
Other passenger earnings	978 28
Total passenger earnings	$3,402 39
Total gross earnings	16,823 11
Operating expenses:	
Maintenance of way and structures	$2,170 87
Maintenance of equipment	2,257 58
Conducting transportation	6,245 22
General expenses	657 49
Total operating expenses	$11,331 16
Net earnings from operation	$5,491 95
Other income from operation	13 65
Total income from operation	$5,505 60
Taxes	313 23
Balance	5,192 37
Interest on bonds	1,285 71
Balance	$3,906 66
Dividends on stock	1,964 28
Surplus	$1,942 38

182 From an inspection of these tables, it will be seen that the Norfolk and Western Railway Company shows gross earnings for the year ending June 30, 1906, on all its Virginia business, of $15,413.43 per mile, and net earnings on the same business of $5,879.68 per mile, all based upon the freight and passenger rates in effect during that fiscal year. From this it appears that the net income of this line is a little more than 5⅞ per cent. on a valuation of $100,000 per mile of its 1,054 miles of track located and operated in Virginia.

That the Chesapeake and Ohio Railway Company for the same year, figured on the same basis, shows gross earnings of $12,974.73 per mile, and net earnings of $4,933.33 per mile; giving a net income of approximately 5 per cent. on a valuation of $100,000 per mile on its 736 miles of track located and operated in Virginia, some 85 miles of which is mere trackage rights over the lines of the Southern and Washington Southern Railroad Companies from Orange to Washington.

That the Atlantic Coast Line Railroad Company, for the same year, figured on the same basis, shows gross earnings of $15,033.10 per mile, and net earnings of $5,115.91 per mile, giving a net income of approximately 5⅛ per cent. on a valuation of $100,000. per mile of its 137 miles of track located and operated in Virginia;

That the Seaboard Air Line Railway Company, for the same year, figured on the same basis, shows gross earnings of $10,362.79 per mile, and net earnings of $3,718.33 per mile, giving a net income of approximately 3¾ per cent. on a valuation of $100,000. per mile of its 157 miles of track located and operated in Virginia;

The Southern Railway Company, for the same year, figured on the same basis, shows gross earnings of $7,712.52 per mile, and net earnings of $2,649.76 per mile, giving a net income of approximately 2⅝ per cent. on a valuation of $100,000. per mile on the 965 miles of track located and operated in Virginia; the expenses of some 75 miles of which, from Orange to Alexandria, are partly borne by the Chesapeake and Ohio Railway Company;

183 The Richmond, Fredericksburg and Potomac Railroad Company shows gross earnings of $21,212.22 per mile, and net earnings of $7,640.10 per mile, or approximately 7⅝ per cent. on $100,000. per mile of its 83 miles of track located and operated in Virginia;

That the Washington-Southern Railway Company shows gross earnings of $23,076.94 per mile, and net earnings of $5,387.49 per mile, or approximately 5⅜ per cent. on $100,000. per mile of its 36 miles of track located and operated in Virginia, after deducting a grossly exorbitant charge for its interstate traffic over the Potomac River bridge, which, as well as the Washington-Southern Railroad, is controlled by the Pennsylvania Railroad Company;

That the New York, Philadelphia and Norfolk Railroad Company shows gross earnings of $16,823.11 per mile, and net earnings of $5,192.37 per mile, or approximately 5 1-5 per cent. on $100,000. per mile, after making many unusual and unwarranted deductions from net income.

These amounts are based upon the companies' own figures, but in most, if not in all, cases it appears from the evidence that many thousands of dollars included by the roads in these operating expenses and other deductions from gross revenue in order to arrive at their net revenue as they report it, should not, for the purpose of this proceeding, have been deducted from the gross revenue. And the commission finds from the evidence, that, as a matter of fact, the net revenue of each road is more, and in some cases very considerably more, than that reported by them as given in the foregoing tables. In view, however, of the fact that even the roads' own reports of their respective net revenues amply justify the action of the commission in this proceeding, the commission does not deem it necessary in this paper, to discuss or point out the extent to which the real net revenues of the several roads is greater than they calculate and report it.

Assuming, for the moment and for the purpose of comparison, that 6 per cent. is an adequate net return on the value of the property of the roads above enumerated, it appears that this rate is
184 being earned by the several roads on the following valuations per mile respectively, stated in round figures:

Norfolk and Western Railway Company, 6 per cent. on $98,000. per mile.

Chesapeake and Ohio Railway Company, 6 per cent. on $82,000. per mile.

Atlantic Coast Line Railroad Company, 6 per cent. on $85,000. per mile.

Seaboard Air Line Railway Company, 6 per cent. on $62,000. per mile.,

Southern Railway Company, 6 per cent. on $45,000. per mile.

Richmond, Fredericksburg and Potomac Railroad Company, 6 per cent. on $127,000. per mile.

Washington-Southern Railway Company, 6 per cent. on $90,000. per mile.

New York, Philadelphia and Norfolk Railroad Company, 6 per cent. on $85,000. per mile.

It must be borne in mind that roadbed and track as shown in miles is not the only investment of these companies; to this chief item of costs must be added also the fair value of equipment, station buildings, freight depots, warehouses and terminals, and any other item of property which *are* necessarily incident to conducting a transportation business. It is difficult to ascertain the exact values of these last named items, but taking the assessed value of these items for taxable purposes in Virginia, as shown by the records of this commission, and distributing this value on a mileage basis, it is found that it only represents the sum of $3,797.78 per mile on the Southern Railway, which is the only road in the group, which is on an earning basis low enough to be possibly affected by this question.

Having shown by the above tables the net earnings per mile of the roads named respectively, on their entire Virginia business, and that no greater percentage of the company's plant is employed in

earning a dollar of intra-state gross revenue than in earning a
185 dollar of interstate revenue, it follows that, if the net earnings of the companies from all their Virginia business, yield them a certain return upon a given valuation of their property employed in earning that revenue (as the figures just given show), then the net earnings upon the intra-state branch of that business must also yield the same return upon a similar valuation of the property employed in earning that intra-state revenue.

We now reach the question as to how far the net income of the several roads as above shown may be regarded as a fair and reasonable return upon a just and fair valuation of the property employed in earning it; and in order to answer this question, we must ascertain and determine what is a fair valuation of such property. Various bases have been suggested and considered by courts and rate making bodies for the ascertainment of the values of railroads and railroad properties.

The bond and stock basis has been suggested; but this is probably the most unreliable and untrustworthy of all measures of value of the property.

The cost of original construction has also been suggested; but this method is subject to various objections, among which is the consideration that the facts from which to determine original cost are usually too remote to be available. Even the cost of reproduction is not always a fair or reliable criterion, seeing that the market price of property, labor and material is a variable and constantly fluctuating quantity; and even if it were not, yet, whether the basis should be the cost of reproduction of the property anew, or the cost of reproduction of the property in its present state, is a question of much difficulty and doubt.

Since the roads by their accounting methods, charge enormous sums annually to maintenance of roadway and structures, and to maintenance of equipment, the aggregate of which sums is annually deducted from the gross revenues in arriving at the reported income, and has been deducted in each case from the net incomes above given, it would seem that they have protected themselves and are continuing to protect themselves financially against the con-
186 sequences of natural depreciation of their property. The evidence shows that as to most, if not all, of the roads, even improvements and betterments were to a greater or lesser extent deducted also from the gross revenues before arriving at the reported income.

Under the laws of this State it was, for many years, the duty of the Board of Public Works, composed of the Governor, the Auditor of Public Accounts and the Treasurer of the Commonwealth, to assess for taxation the value of all railroad property in this State; for four years past this duty has developed upon this commission, which, in the performance thereof, has made careful personal inspections of all the railroad property in the State, and availed itself of every practical source of information as to the true value of that property, and have assessed it as the facts and circumstances of the case would, in their opinion, justify, with a view of deriving there-

from for the State the fair amount of taxes, to which, under the law, it was entitled. In these annual assessments, the interests of the State is naturally in the direction of increasing, while that of the railroad companies is equally in the direction of diminishing, the value of the railroad property, therefore, it would seem but reasonable to assume that the amount of such assessments should certainly not be regarded as unreasonably low, at least so far as the railroad companies are concerned.

The assessment of railroad property in Virginia under the old Board of Public Works was in no single instance more than $15,000.00 per mile, and, under this commission, has never been up to and including the year 1906 more than $16,000.00 per mile on single track roadway proper, and in many instances it is much less.

The Commission does not hold that the taxable value of railroad property and its commercial value is or should be the same, any more than in the case of any other property, but it is manifestly true that such values should bear some reasonable relation to each other, and that the assessed value of such property as ascertained year after year in this State and in many others, where conditions are
187 similar, and with reference to many different roads, should be considered and given due weight—not as alone determining, but—as an element and a very important element in determining the true commercial value of such property. Assessments may indeed be erroneous, but it is wholly improbable that when the assessments made by States for the purpose of taxation are considered with reference to many different years, and for many different roads, it would be found that the State, for every year and every road, has made an error against itself and in favor of the road, and still more improbable would it be that the railroads had first discovered and pointed out the error.

One of the important duties of this Commission is to constantly inspect all the railroads of this State and to keep itself thoroughly posted with reference to the physical condition of the track, roadbed, structures and equipment of such property. This duty has been conscientiously and regularly performed by this body for a number of years. The necessary result of this has been to inform and keep informed this Commission of the condition and value of the railroad property of this State, as fully as any personal knowledge of property could enable one to judge of its value. This personal knowledge the Commission deems it right and proper that it should—not rely absolutely upon, but should—avail itself of in arriving at a fair and just estimate of the true commercial value of the property.

Few or no questions are more delicate or difficult of determination than the true commercial value of railroad property as a proper basis for rate fixing. Many persons have sought to evolve some simple and ready rule for making the estimate, and many different criteria have been suggested; but, in the opinion of this Commission, there is no single element or consideration which can be accepted as a safe or reliable guide, but that due weight and consideration must be given to many different ones.

The law as laid down by the courts requires the ascertainment of *some* value of the property as a basis upon which, as a matter of constitutional right, the company is entitled to earn a fair
188 return—in any event, at least so far as that can be done with reasonable rates. The law must contemplate then that there is some practicable method by which this value can be ascertained, and this Commission knows of no better, or more reliable method than to give due and proper consideration and weight to the following matters among others.

1st. The original cost of the property so far as it is shown.

2nd. The amount of the capital and bonded debt of the company applicable to the property in this State.

3rd. The market value of such stock and bonds.

4th. The cost of reproducing the property anew so far as it is shown.

5th. The cost of reproducing the property in its present condition so far as it is shown.

6th. The properly assessed value of the property for purposes of t-xation.

7th. The personal knowledge of the property by the Commission.

No one of these considerations should control, but due weight should be given to each. That some are entitled to much more weight than others is obvious, and that some are more easily ascertainable than others is equally obvious. For instance, the original cost of a railroad and its equipment is often absolutely unascertainable, and it is wholly impracticable to ascertain the cost of reproduction—either anew or in its present condition. Even if all of these matters were known, they could not safely be relied upon absolutely, because in many cases, particularly in this State, the property was acquired by the present owner at much less than its original cost or at which it could now be reproduced in any form.

Probably the most unreliable and misleading of all the foregoing considerations is the amount or present market value of the stock and bonds of the road. It is well-known that railroad stocks are rarely, if ever, issued for full value. In fact the general rule is that the money put into railroad property is wholly represented by its bonds, the stock being issued as a bonus and represents the
189 control, rather than the contribution to the property. Even when this is not fully true, it is impossible to tell to what extent it is true, especially when the present company, as is often the case, is the result of the merger, consolidation or re-organization of one or more corporations. Nor should the present market value of the stock at all be a controlling guide; because that value is constantly fluctuating, is readily and often manipulated, and depends much more upon the earning capacity of the road than upon the value of the property employed. It would, therefore, be but reasoning in a circle to fix the earning capacity by the value of the property employed, and then, in turn, ascertain that value by the earning capacity as reflected in the market value of the securities.

These are the considerations which have led the Commission to consider all the foregoing matters as well as everything else in the evidence tending to throw light upon the question, but to give

varying weight to each consideration, their final judgment being a composite result of them all.

By this process, the Commission has arrived at the conclusion that the entire Virginia property of no railroad company assessed by it is really worth more than $50,000.00 per mile for the entire mileage in this State, while the property of most of such companies is worth less. The Southern Railway Company's entire property, composed as it is, largely of branch lines of cheap construction and not well maintained, on which is operated light and rather cheap class of equipment, is, in the opinion of the Commission, worth greatly less on its entire mileage in this State. The assessments of the property of the Southern Railway, made by the Commission for the year 1906, are as follows:

Roadway and track	$11,348.15 per mile.
All other property	3,797.78 per mile.
Total assessment of physical property	$15,145.93 per mile.

190 The Virginia revenue law provides for the payment annually of a franchise tax at a rate of one per cent. on Virginia gross transportation receipts of the railroads. If we consider the amount of this franchise tax paid by the Southern Railway to the State, and capitalize it on the basis of $1.25 per $100.00 (estimated to be the minimum average rate of taxation in Virginia, State, county and municipal, on property generally), we would have the additional sum of $5,708.45 per mile. Adding this sum to the assessed value of all the physical property above given, we have a total valuation of $20,854.38 per mile, reached upon a basis which puts the Southern Railway upon the same plane as other tax payers of the State. The Commission is clearly of opinion that the franchise tax should not be considered in this connection, and only includes it in the figures above given for the purpose of showing the outside valuation of the Southern Railway for taxable purposes from any standpoint from which the subject might be considered.

The Commission does not propose to fix for each road, or any of them, the *least* sum to which they could be restricted as a basis for earning capacity, without transgressing the constitutional limit of confiscation. As to how far this side of that limit the regulation should stop, is, in the opinion of the Commission, a matter of legislative discretion to be exercised by it as it deems wisest and best for the public welfare, not overlooking the fact that the railroads themselves and the holders of their securities are a part, and a very important part of that public.

In the exercise of this discretion, the Commission deems it the height of unwisdom and mistaken policy to restrict the railroad companies to the utmost point legally permissible or anywhere near that point. On the contrary, the Commission deems it manifestly wise and proper that the railroads, as one of the greatest engines of civilization and prosperity, on the successful operation of which practically every industry and every community is largely dependent,

should be given every reasonable encouragement and dealt with as liberally as the public interests and the welfare of their patrons will permit.

191 The Commission, therefore, in its final action in these proceedings has been guided by these considerations and has decided upon the reduction in the maximum limit to passenger fares which it orders only after assuring itself, that, even if such reduction is not fully compensated by the consequential increase in business the roads will still be left, upon their intra-state Virginia business, such a margin of profit upon any fair value of the property employed as will enable their business to compare favorably in profitableness with any of the large, or standard, businesses of the country, and not even approach anywhere near the legal limit of confiscation.

But the Commission is convinced from the evidence in these proceedings, that this reduction in the maximum limit of passenger fares, when put into effect in good faith by the carriers, will not result in such a loss of revenue as would first appear from a consideration of the difference between the present maximum and the one proposed.

No branch of transportation is so responsive to lower fares as the carrying of passengers. Of course, there is a certain amount of travel which is compelled to move regardless of fares; but a very large amount of railroad traveling is the direct result of attractive rates which enable and encourage people to move about. None are better aware or more appreciative of this fact than the railroad companies themselves, who, to encourage and increase this travel, have for many years voluntarily sold a large part of their transportation at very much less than the existing maximum limit of three cents a mile. In fact, the evidence shows that but a comparatively small part of the rates actually realized are as much as three cents, and that a very large part of them have long been from two cents a mile down. In States where a maximum limit has been established by law within the last one or two years, some roads have voluntarily withdrawn all their previously existing rates of less than two cents, thus cutting themselves off from the benefit of all the traffic for which these low rates were designed, and which moved only because of it.

192 These lower rates consisted for the most part of excursion rates and special rates to fairs, conventions, and other public gatherings. It is perfectly obvious that the roads had heretofore granted these lower rates because of the plain business considerations that it was better to carry the people, for whom these fares were designed, at these low rates than not at all, and that this kind of passenger traffic only moved under and because of these low rates, in view of the fact that it was not obliged to move at all. These considerations are obvious just as applicable and controlling under a two-cent maximum as under a three-cent maximum, and therefore those roads which, for any reason, withdrew their former rates of less than two cents, did so voluntarily and not because the two cent limit required or forced them to it, and thus by their own act deprived themselves of that large and profitable part of their passenger traffic which only moves because of these low rates. Except when this was done, the evidence fails to show that any standard

road has suffered any substantial diminution, but shows that some of them have derived a positive increase, of their passenger revenues under a two-cent maximum fare as compared with their revenues under a three-cent maximum fare.

After a careful study of the evidence and of the entire railroad situation in this State, the Commission believes, under the maximum limit of passenger fares as prescribed by it in this proceeding,

First. That the revenues of the railroad companies affected will not be necessarily diminished as compared with their existing revenues, but may be increased;

Second. That, if their revenues be in fact diminished thereby, they will not be sufficiently diminished to work any unjust or unreasonable deduction in their net earnings; and

Third. That since the effect of such maximum limit will not be to work a greater reduction in the companies' net earnings than they could be just and reasonably called upon to bear, such reasonable reduction should be applied as far as practicable, to such rates as are best able to bear it, and most generally affect public interest. Applying this principle to the evidence in the case, so far as
193 adduced, we reach the conclusion, and there is little, if any, evidence to the contrary, that it is proper to make the bulk of reduction in passenger fares, especially since such reduction will be more surely and readily compensated for by increased business, than if a similar reduction had been made in other classes of traffic. The increased passenger revenues which must necessarily result from the withdrawal of free transportation under the operation of recently enacted laws, may be an item worthy of consideration in this connection.

So long as a company earns a satisfactory net profit from all of its intra-state business, taken in its entirety, it cannot legally or reasonably complain that more of this profit is earned out of one particular branch of that business than out of some other branch. As to which branch of intra-state business, or what particular item or items of transportation, should bear the heaviest, and which the lightest burdens, considered from the standpoint of public interest, is for the commission, and not for the railroad companies to decide, so long as the aggregate net revenue left to the companies is adequate, just and reasonable.

The commission is of opinion that a maximum rate of two cents per mile for the transportation of all intra-state passengers is not unreasonably low for the roads enumerated in the tables above given, numbered from 1 to 8, inclusive, considering the proportionate value of the property used by them in intra-state business and the character of service rendered to intra-state passengers. These roads will be specified by name in general schedule "A," hereinafter appearing. This conclusion is based upon the business of the roads, respectively, as shown by the evidence in this case, and by the operating reports for the years 1905 and 1906. It is true that the net earnings of the several railroads enumerated in this group are variable as to amount, and the presumption might arise that the roads showing the smaller earning power should not be classed with those showing the larger. We feel that this view is defeated by the fact that the larger

earning roads, with one or two exceptions, are using property
194 of much greater value per mile than that used by the smaller earners. In view, however, of the fact that the net income per mile of the Southern Railway Company is small in comparison with the other roads in the same group, it is deemed reasonable to allow, and there will accordingly be allowed, a maximum rate of two and one-half cents per mile for intra-state passengers transported on the following divisions, or branches, of the said Southern Railway Company, viz:

Norfolk Division, extending from Pinner's Point to Danville, 204 miles;

Franklin Branch, extending from Franklin Junction to Rocky Mount, 37 miles;

Claremont Branch, extending from James River Junction to Claremont, 50 miles.

So that the two and one-half cent rate will apply to 291 miles, or 30 per cent. of Virginia mileage of the Southern Railway Company.

From a careful consideration of the evidence in this case, and of the operating reports of the Virginia and Southwestern Railway Company, and Louisville and Nashville Railroad Company, we feel constrained to include, and accordingly will include them in the group of roads which are limited to a maximum passenger rate of two cents per mile. The operating reports of these two roads, on their face, might not seem to justify this reduction; but the facts appearing on cross examination relative to the method of accounting in use by these two roads fully justify a reduction of their passenger rates to two cents per mile, and they will so appear in general schedule "A."

The commission is further of opinion that a maximum passenger rate of three cents per mile should be observed as to intra-state passengers by the Winchester and Potomac Railroad Company, Winchester and Strasburg Railroad Company, and the Valley Railroad Company of Virginia. It having appeared in the evidence that a mileage book is sold by the Baltimore and Ohio Railroad Company at a rate of two cents per mile, available on these three roads, it is thought that this voluntary reduction, taken in connection
195 with the slight one herein made, is as much as the financial showing of these roads will justify at present. These roads appear in general schedule "B." In this connection it might be proper to state the net income of these three roads from all sources for the year ending June 30, 1906, as shown by the operating reports on file in this office, are:

Valley Railroad Company of Virginia, 6 per cent. on a valuation of $14,000 per mile.

Winchester and Potomac Railroad Company, 6 per cent. on a valuation of $17,500 per mile;

Winchester and Strasburg Railroad Company shows a deficit after paying operating expenses.

If we treat these three lines as a part of the Baltimore and Ohio System, and consolidate their earnings, we find that under the maximum passenger rate of three and one-fourth cents now in effect on

these roads, the Baltimore and Ohio net earnings from all Virginia business, inter- and intra-state, is on a basis of 6 per cent. on less than $14,000 per mile. The fact that the Baltimore and Ohio Railroad Company is a large and powerful system in other States, would not seem to affect the question before us, at least from the standpoint of the legal limitations of the rate-making power of Virginia.

These statements are not regarded by the commission as fairly representing the earnings of these roads, but, even when properly analyzed, are not such as to justify further reduction at present.

The commission is further of opinion that a maximum passenger rate of three cents per mile should be observed as to intra-state passengers by the Norfolk and Southern Railway Company, and the Virginia and Carolina Coast Railroad Company, now operated by said Norfolk and Southern Railway Company. The net income of the Norfolk and Southern Railway Company from all sources for year ending June 30, 1906, as shown by its operating report on file in this office, is $805.85 per mile, which is on a basis of 6 per cent. on a valuation of about $13,000 per mile. The net income of the Virginia and Carolina Coast Railroad for the same year is very
196 much less. Under these conditions the commission does not feel warranted in reducing the maximum rate on these two roads below three cents per mile. These roads also appear in general schedule "B."

The commission is further of opinion that a maximum passenger rate of three cents per mile should be observed as to intra-state passengers on all roads embraced in general schedule "B," and that a maximum passenger rate of three and one-half cents per mile should be observed as to intra-state passengers on all independent narrow-gauge steam roads, and on all independent broad-gauge roads less than ten miles in length. These roads appear in general schedule "C."

General Schedule Showing Rates of Passenger Fares for the Several Steam Roads Operating in Virginia, as Ordered by the State Corporation Commission.

SCHEDULE A.—(2 CENTS PER MILE.)

Norfolk and Western Railway Company,
Chesapeake and Ohio Railway Company,
Atlantic Coast Line Railroad Company,
Seaboard Air Line Railway,
Southern Railway Company,
Richmond, Fredericksburg and Potomac Railroad Company,
Washington-Southern Railway Company,
New York, Philadelphia and Norfolk Railroad Company,
Virginia and Southwestern Railway Company,
Louisville and Nashville Railroad Company.

Except that a maximum rate of two and one-half cents per mile will apply on the following divisions or branches of the Southern Railway Company:

Norfolk Division, extending from Pinner's Point to Dan-
197 ville, 204 miles, exclusive of so much of the said division as may be in the State of North Carolina.

Franklin Branch, extending from Franklin Junction to Rocky Mount, 37 miles.

Claremont Branch, extending from James River Junction to Claremont, 50 miles.

SCHEDULE B.—(3 CENTS PER MILE.)

Chesapeake-Western Railway,
Cumberland Valley and Martinsburg Railroad Company,
Danville and Western Railway Company,
Indian Creek and Pound River Railroad Company,
Marion and Rye Valley Railway Company,
Nelson and Albemarle Railway Company,
Valley Railroad Company of Virginia,
Virginia-Carolina Railway Company,
Virginia Southern Railroad Company,
Winchester and Potomac Railroad Company,
Winchester and Strasburg Railroad Company,
Norfolk and Southern Railway Company.

SCHEDULE C.—(3 1-2 CENTS PER MILE.)

Big Sandy and Cumberland Railroad Company,
Big Stone Gap and Powell's Valley Railway Company,
Black Mountain Railway Company,
Interstate Railroad Company,
Lick Creek and Lake Erie Railroad Company,
Mt. Airy and Eastern Railway Company,
New River, Holston and Western Railroad Company,
Potomac, Fredericksburg and Piedmont Railroad Company,
Surry, Sussex and Southampton Railway Company,
Tidewater and Western Railroad Company,
Virginia Anthracite Coal and Railway Company,
Virginia and Kentucky Railway Company,
Wise Terminal Company.

198 It has been urged by the carriers that the prices of material and labor have greatly increased during the period of this investigation, and are continuing to increase since the evidence in the case was taken. Examination shows, however, that, in practically all cases, the gross earnings of the roads are also increasing, and that the most that can be said as to this claim, when properly analyzed, is that the profits on increased gross earnings are being absorbed by increased charges for labor and material, though the commission is not prepared to find that even this is wholly true. In the case of some of the roads, such for instance as the Southern, it is found that they are failing to accept and carry much of the intra-state Virginia traffic originating on their lines, or tendered to them by connecting lines, and which is now making urgent demand upon them for trans-

portation. This failure to transport traffic tendered, and naturally tributary to them, is not found to exist on those roads which are conducting the largest amount of business, but on the roads which are handling along their tracks, a volume of traffic below the average. It would appear from the evidence that if many of the roads which complain of lack of revenue would utilize fully, as they should, the improved facilities now owned by them, both of power and equipment, in the transportation of traffic already offered to them, the profit arising from increased business would soon take care of any increase in the cost of material and labor.

The State of Virginia and the whole South is throbbing with energy and enterprise, and teeming with traffic as never before. The field of opportunity for railroad companies has widened and continues to widen beyond the most sanguine expectations of their official heads, and admittedly far beyond their present state of preparedness. We have shown that the net profit arising from the handling of this greatly increased and increasing traffic, even under the reduction herein ordered, will be equal to, if not greater than that enjoyed by other standard and legitimate business in the country. It is inconceivable that the carriers should, under these conditions, find themselves unable to command the financial credit neces-
199 sary to the performance of their public duties, and to the provision of such increased facilities in the nature of track, terminals and equipment, as may be necessary to keep pace with the expansion of traffic, of which they are to become the beneficiaries.

VIRGINIA, *City of Richmond, To-wit:*

We, R. R. Prentis and R. T. Wilson, Chairman, and Clerk, respectively, of the State Corporation Commission of Virginia, do hereby certify that the foregoing is a full, complete and true copy of the written opinion of the said Commission which is referred to in the last order contained in the foregoing transcript of record, and which opinion, by said order, is made a part of the record of the proceeding in which said order was entered.

In testimony whereof, we have hereunto set our hands, and affixed the seal of the said State Corporation Commission, this the 25th day of June, 1907.

[Seal of the State Corporation Commission of Virginia.]

ROBERT R. PRENTIS,
Chairman.
R. T. WILSON, *Clerk.*

This day R. T. Wilson, Clerk of the State Corporation Commission of Virginia, to me personally known, appeared in person before me, the undersigned, a Notary Public in and for the City of
200 Richmond, in the State of Virginia, and, before me, in my said city, subscribed and made oath to the foregoing certificate.

In testimony whereof I have hereunto set my hand and affixed my official seal this, the 25th day of June, 1907.

[NOTARIAL SEAL.] JNO. S. EGGLESTON,
Notary Public.

201 *Decree Directing Coupons to Issue to Purchasers of Tickets, &c., and Continuing Restraining Order Awarded May 22nd, 1907.*

Entered and Filed June 29th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Complainant,
versus
BEVERLEY T. CRUMP and Others, Defendants.

This cause came on this day to be heard on the papers formerly read and on the application of the complainant herein, in accordance with the sixth section of the order entered herein on May 15, 1907, and it being impossible for the court to determine the motion for an injunction *pendente lite* until after the 1st day of July, 1907, the date fixed in the order of the State Corporation Commission of Virginia for the rates thereby prescribed to go into effect; to the end that the rights of no one shall be put in jeopardy but that proper arrangements shall be made and orders entered whereby the legal status of all parties affected by this litigation shall be preserved, the court doth Adjudge, Order and Decree that the complainant, beginning on the 1st day of July, 1907, or if that be impossible, then as soon thereafter as practicable, give to any person who travels between points on its line in the State of Virginia, either on
202 a ticket at a rate of more than two cents per mile, or pay cash fare, a coupon substantially in the following form, to wit:

"The Louisville & Nashville Railroad Company.

Virginia Ticket Claim Coupon.

To be retained by passenger

Not good for passage.

—— to ——.

Issued under an order of the United States Circuit Court for the Eastern District of Virginia, in a suit in equity No. —, therein pending, between The Louisville and Nashville Railroad Company and Beverley T. Crump, *et al.*"

and that said coupon shall be of such form and number as that from it, in connection with the ticket or other evidence of transportation

to which it corresponds, may be ascertained the sum to which such person shall be entitled in the event that the order entered by the State Corporation Commission of Virginia on the 27th day of April, 1907, is in this cause finally upheld as a valid and binding order.

And the court doth further Adjudge, Order and Decree that the restraining order heretofore awarded in this cause on the — day of May, 1907, be and the same is hereby continued until the further order of this court.

J. C. PRITCHARD,
U. S. Circuit Judge.

June 29th, 1907.

203 *Special and Limited Appearance for Defendants.*

Filed July Rules, Monday, July 1st, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Complainant,
versus
BEVERLEY T. CRUMP, HENRY C. STUART, and JOSEPH E. WILLARD, Individually and as Constituting the State Corporation Commission of Virginia, and R. T. WILSON, Clerk of the State Corporation Commission of Virginia, Defendants.

Special and Limited Appearance at Rules for Defendants on the First Monday in the Month of July, 1907.

We, the undersigned attorneys-at-law, hereby appear for, and on behalf of, the defendants in the above named cause, for the purpose of objecting to the jurisdiction of this court to entertain the said cause, or to make any order therein, against the said defendants, or any of them, and for that purpose alone, this appearance is limited, and is made specially and solely for the purpose of objecting to the jurisdiction of the Court, in said cause, and for no other purpose whatsoever.

WILLIAM A. ANDERSON,
A. CAPERTON BRAXTON,
Solicitors and Counsel for said Defendants.

204 *Agreement of Counsel.*

Filed July 1st, 1907.

In Equity.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Complainant,
versus
BEVERLEY T. CRUMP and Others, Defendants.

It is agreed that, if the court should hold that it has jurisdiction of this cause, then it need not go into the question of the merits upon

the hearing of this rule, but may thereupon grant the preliminary injunction referred to in the rule and refer the cause to a Master; provided that the sole purpose and effect of this stipulation is and shall be that the granting of such preliminary injunction and the referring of the cause to a Master without further affidavits or testimony on the merits on the part of the Complainants shall not be assigned or treated as error; all other rights and remedies whatsoever of the defendants shall remain unaffected, and particularly shall they not be considered as or regarded as having made any concession upon the question of the jurisdiction of this court or the conclusiveness as a matter of law of the action or order of the Virginia State Corporation Commission in the premises, all questions on the merits being reserved for a hearing before the Master and before the Court on final hearing—the concession made herein by the defendants as to the granting of the interlocutory injunction is not to be used against them on any question of fact, or legal presumption as to fact, either before the Master or before the Court on the final hearing on the merits.

205 *Memorandum of the Court.*

Filed July 10th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Complainant,
versus
BEVERLEY T. CRUMP and Others, Defendants.

I fully appreciate the fact that the questions involved in this controversy are serious in their character and require the closest scrutiny in order that a proper conclusion may be reached in determining the same.

It is always a source of regret to me to be called upon to determine the validity of an Act of a legislative or other body representing a sovereign State, and in this instance, it is especially so, entertaining as I do, the profoundest respect for the State of Virginia and her institutions. This is also true of North Carolina, where I have been recently called upon to decide questions similar to those involved in this proceeding, and applies with equal force to any of the States of the Union. However, I am called upon to *pre*form a solemn duty and the obligation which rests upon me to determine the questions involved in this cause in accordance with the provisions of the Constitution of the United States is imperative. It is not my purpose to attribute any unworthy motives to those who framed the provisions of the constitution authorizing the creation of the Corpo-
206 ration Commission of Virginia. I am satisfied that those who were instrumental in securing the adoption of such provisions were honestly endeavoring to devise some means by which there could be a proper ascertainment of rates to be charged by railroads

and other public corporations, yet in determining the questions presented for my consideration it becomes my duty to ascertain, if possible, the effect of the constitutional provisions in question. The courts cannot consider motives nor public policy in dealing with questions of this character, but must be *guide* solely in construing the same by the limitations imposed by the constitution of the United States. The power and duty of the courts of the United States to afford to individuals protection for their constitutional rights in respect to property even as against persons claiming under authority of the United States itself have repeatedly been recognized by the Supreme Court of the United States. A notable case being the one where the descendants of General Robert E. Lee instituted suit against officers of the United States for the possession of Arlington and the Circuit Court of the United States for the Eastern District of Virginia afforded relief to the constitutional rights of these descendants of General Lee for the possession of that property, and this decision of the Circuit Court was affirmed by the Supreme Court of the United States in the case of the United States *vs.* Lee 106 U. S. 196. The decision of the Circuit Court in this case is reported under the title of the Arlington case, 3rd Hughes 36.

The complainant in this cause seeks to enjoin the enforcement of certain passenger rates recently adopted by the State Corporation Commission of the State of Virginia. It insists that its present rates in the State of Virginia are not higher than a reasonable compensation for the services rendered by it to travellers on its lines, and are in no sense excessive or exorbitant; that they are not unjustly, unduly unreasonable or illegally discriminatory between individuals, nor as between localities and that they in no way violate the law. It also insists that it has as an incident of its property, and as a property right, the right to charge for each service it renders a reasonable compensation, and that it is protected by the Fourteenth Amendment to the Constitution of the United States in making, receiving and collecting such charge. It is also insisted that the effect of the proposed rates would be to materially diminish its charges and reduce the same greatly below what would be reasonable and just compensation for the respective services rendered to the patrons of its lines. It is contended that to prevent it from charging a reasonable compensation for the services rendered to the travelling public would be to deprive it of its property without just compensation and without due process of law.

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It is likewise insisted by the complainant that if the order of the State Corporation Commission of Virginia prescribing and fixing rates should be permitted to go into effect it would subject it to the danger of a multitude of suits based on such order and to prosecutions for penalties in enormous amounts.

Among other things complainant prays for an injunction against Beverley T. Crump, Henry C. Stuart, Joseph E. Willard, individually, and as constituting the State Corporation Commission of Virginia, and R. T. Wilson, Clerk of the State Corporation Commission during the pendency of this suit.

On May 22, 1907, an order was entered restraining the defendants from enforcing the provisions of the aforesaid Act, and at the same

time, notice was issued to the defendants to appear before me on the 27th day of June 1907, and show cause why the injunction
208 should not be continued until the final hearing.

The defendants file an answer in which they say that the rates fixed by the State Corporation Commission are not confiscatory. However, when the motion came on for hearing counsel representing complainant and defendants signed an agreed statement of facts, as to that part of the bill which charges that the rates are confiscatory. The part of the agreement which is essential to the determination of the questions now before the court, reads as follows:

"It is agreed that, if the court should hold that it has jurisdiction of this cause, then it need not go into the question of the merits upon the hearing of this rule but may thereupon grant the preliminary injunction referred to in the rule and refer the cause to a master. * * *."

In view of the foregoing agreement the only question left for consideration is whether this court has jurisdiction of the questions involved.

It is insisted by counsel for the defendants that the State Corporation Commission of Virginia is a court within the meaning and intent of the provision of Section 720 of the Revised Statutes of the United States, which reads as follows:

"The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

I have heard with much pleasure the unusually able and interesting arguments of counsel representing complainant and defendants, and have given the questions presented much consideration, and in this connection, will say that, I have never had presented to me a question which has caused me greater concern than the one involved in this hearing.

Section 720 of the Revised Statutes is plain and explicit and cannot be misinterpreted, but I am forced to the conclusion that it does not apply in this instance.

It is true that the Court of Appeals of Virginia has held
209 that the Corporation Commission of Virginia possesses judicial, executive and legislative functions. Nevertheless I am of opinion that in fixing the rates involved in this controversy the Corporation Commission was exercising a legislative function, and therefore was not acting as a court within the meaning of Sec. 720 of the Revised Statutes, and its acts in attempting to put in force the rates thus established are administrative. Under these circumstances, this court has jurisdiction to restrain the defendants from publishing and enforcing the rates which have heretofore been prescribed and established by said Commission. The acts sought to be restrained being purely ministerial in their character, the complainant seeks to assert a right which is guaranteed by the Constitution of the United States and it thereby becomes the duty of the court to entertain jurisdiction in order that the reasonableness of such rates may be judicially determined.

It is not necessary, at this time, to pass upon the validity of the

provision of the Constitution of Virginia which created the State Corporation Commission; that is a question which the court reserves until the final hearing of this cause.

For the reasons herein stated the restraining order heretofore granted will be continued until the final hearing.

In conclusion, I will say that it is a source of gratification to me to know that my decision in respect to this question is not final, but that it is to be ultimately submitted to the Supreme Court of the United States for determination, and if I have committed error that distinguished tribunal will correct the same.

210 I will prepare an opinion at an early date in which I will discuss more fully my views in regard to the matters in controversy.

Decree Granting Interlocutory Injunction.

Entered and Filed July 10th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

Before Honorable J. C. Pritchard, Judge of said Court.

In pursuance of the order to show cause made herein on the 22nd day of May, 1907, by which the said defendants were ordered to appear before this Court in the United States Court Room at Asheville, N. C., at Ten o'clock a. m., on Thursday, the 27th day of June, 1907, to show cause if any they had or could show why an injunction *pendente lite* as prayed in the bill should not be issued, said defendants appeared by counsel and by consent of defendants through their counsel and of the complainant through its counsel the fourth paragraph of the order herein of May 22nd, 1907, was amended so as to require the defendants and each of them to show cause before a Judge of this Court (instead of before this

211 Court) in the United States Court Room at Asheville, North Carolina, on the date mentioned;

And thereupon the defendants filed their answer in writing objecting to the jurisdiction of this Court in the premises and by a like consent Robert R. Prentis was substituted as one of the defendants in this cause in the place of the defendant Beverley T. Crump, said Robert R. Prentis having since the institution of this suit, succeeded the said Beverley T. Crump as a member and as Chairman of the State Corporation Commission of Virginia and it was stipulated at the bar of this court between counsel for the defendants and counsel for the plaintiff as follows:

"It is agreed that, if the court should hold that it has jurisdiction

of this cause, then it need not go into the question of the merits upon the hearing of this rule, but may thereupon grant the preliminary injunction referred to in the rule, and refer the cause to a Master; provided that the sole purpose and effect of this stipulation is, and shall be, that the granting of such preliminary injunction, and the referring of the cause to a Master, without further affidavits or testimony on the merits on the part of the complainants shall not be assigned or treated as error; all other rights and remedies whatsoever of the defendants shall remain unaffected, and particularly shall they not be considered as, or regarded as, having made any concession upon the question of the jurisdiction of this court or the conclusiveness as a matter of law of the action or order of the Virginia State Corporation Commission in the premises, all questions on the merits being reserved for a hearing before the Master and before the Court on final hearing—the concession made herein by the defendants as to the granting of the interlocutory injunction is not to be used against them on any question of fact, or legal presumption as to fact, either before the Master or before the Court on the final hearing on the merits."

And thereupon the motion of the Complainant for an interlocutory injunction, as prayed in the bill, coming on to be heard before the judge of this court, and the said motion having been heard upon the bill of complaint in this cause, treated as an affidavit, upon the answer thereto of the defendants objecting to the jurisdiction of the court, upon said stipulation of counsel, and upon the affidavits filed herein by the complainant, and the said motion having
212 been argued by counsel, and having been fully considered, it is now ordered:

1. That, until the further order of the Court herein, the defendants Robert R. Prentis, Henry C. Stuart, and Jos. E. Willard, individually and as constituting the State Corporation Commission of Virginia, and each and all of their successors in office, their and each of their servants, agents and employees, be, and they hereby are, restrained and enjoined from publishing, or having published, in any newspaper published in the City of Richmond, Virginia, the general order of the State Corporation Commission of Virginia, bearing date the 27th day of April, 1907, in respect to passenger rates, in the bill in this cause mentioned, and from taking any other step or steps whatsoever under the Constitution or laws of Virginia, or otherwise, to enforce the requirements of said order.

2. That, until the further order of the Court herein, the defendant, Richard T. Wilson, Clerk of the State Corporation Commission of Virginia, his successors in office, and his servants, agents and employees, be, and they are hereby, restrained and enjoined from publishing, or having published, said order of the State Corporation Commission of Virginia in any newspaper published in the City of Richmond.

3. That, until the further order of the Court herein, the owners, proprietors, or managers of any newspaper published in the city of Richmond, Virginia, be, and each and every one of them is, hereby restrained and enjoined from publishing, or having

published, under the direction of the State Corporation Commission of Virginia or the Clerk thereof, such order of the State Corporation Commission of Virginia.

4. That said complainant, or some one for it, shall appear before a judge of this Court, or the Clerk thereof, and execute a bond in the penalty of Twenty Five Thousand ($25,000) Dollars, with surety to be approved by such Judge, or by such Clerk, conditioned to pay into the registry of this Court from time to time when and as the Court
213 may so order such sum or sums of money as shall be equal to the difference between the aggregate passenger rates charged and received by it for intrastate service on its lines in the State of Virginia and what would have been the aggregate amount for such service at the rates fixed in said order of the State Corporation Commission of Virginia of April 27th, 1907, and further conditioned that, whereas an interlocutory injunction has been issued in this cause, by the terms of which the defendants, and each of them, are restrained until the further order of this Court, as from said order will appear, should the said interlocutory injunction be dissolved or vacated as having been wrongfully issued, or because the said acts were improperly restrained, then that the complainant should pay, or cause to be paid, all damages caused by the issue of such interlocutory injunction, and the costs in this cause in connection therewith.

5. That the complainant shall give to any person who travels between points on its lines in the State of Virginia at a rate exceeding two cents per mile coupons substantially in the following form, to wit:

"Louisville & Nashville Railroad Company.

Virginia Ticket Claim Coupon.

To be retained by passenger.

Not good for passage.

—— to ——.

Issued under an order of the United States Circuit Court for the Eastern District of Virginia, in a suit in equity, No. 580, therein pending, between the Louisville & Nashville Railroad Company and Beverley T. Crump, *et al.*"

and that said coupon shall be of such form and number as that from it, in connection with the ticket or other evidence of transportation to which it corresponds, may be ascertained the sum to which such person shall be entitled in the event that the order entered by the State Corporation Commission of Virginia on the 27th day of April, 1907, is in this cause finally upheld as a valid and binding order.

6. That the complainant herein shall preserve and produce
214 whenever so ordered by the Court all cancelled tickets or other evidence of transportation, in respect to which coupons, as provided for in the order entered herein June 29th, 1907, may be outstanding, and shall, from time to time, as required by order of the Court so to do, report to the Court statements showing the revenue by it charged and collected for the intrastate transportation

of passengers in the State of Virginia in excess of the amounts permitted by said order of the State Corporation Commission of Virginia of April 27th, 1907, and the complainant shall from time to time give such further bond or bonds as the Court may require to secure proper payment into the registry of the Court of all the amounts which finally shall be adjudged that it should so pay under the final decision in this cause.

7. That, if it shall be determined herein that the complainant is entitled to the amounts covered by said bond or bonds then said bond or bonds shall be released and canceled by the court and if any amount shall have been paid into the registry of the court pursuant to the orders of this Court, that then, upon such determination in favor of the complainant, the sum or sums so paid into the registry shall be repaid to the complainant without further order of the Court herein.

8. That the restraining order heretofore entered in this cause shall be continued and remain in full force and effect until this interlocutory injunction shall take effect.

9. It is further ordered that a writ of injunction shall forthwith issue in accordance with this order.

10. And thereupon the complainant tendered its bond to comply with the provisions in respect to a bond in this order duly
215 executed by the complainant as principal and by the United States Fidelity and Guaranty Company of Baltimore, Maryland, as surety, which said bond and execution thereof and surety thereon are hereby approved.

July 10th, 1907.

J. C. PRITCHARD,
U. S. Circuit Judge.

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Injunction Bond.

Filed July 10th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

Know all men by these presents, That the Louisville & Nashville Railroad Company, a corporation and citizen of the State of Kentucky, the principal office of which is in the city of Louisville, in said State, as principal, and the American Surety Company of New York, as surety, are held and firmly bound unto the United States of America and the defendants, Beverley T. Crump, Henry C. Stuart, Joseph E. Willard, and R. T. Wilson, and any and all other person or persons interested, in the just and full sum of Twenty-five Thousand ($25,000.00) Dollars, for the payment of which well

and truly to be made, we do hereby jointly and severally bind ourselves and each of our successors firmly by these presents.

Signed and sealed this 10th day of July, A. D., 1907, the said Louisville & Nashville Railroad Company being signed by W. L. Makother, First Vice President, and attested by J. H. Ellis, Secretary, who also affixed the corporate seal of said company, and the said American Surety Company of New York, acting by Robert LeMassurier, who signed hereto the name of said Surety
217 Company, as Agent, affixing hereto its corporate seal.

The condition of this obligation is such that:

Whereas, An interlocutory injunction has been granted in the above-styled cause, by the terms of which the defendants, each of them individually, and jointly as constituting the Corporation Commission of Virginia, and each and all of their successors in office, their and each of their servants, agents, and employees, are restrained and enjoined from publishing in any newspaper published in the city of Richmond, the general order of the State Corporation Commission bearing date twenty-seventh day of April, 1907, in respect to passenger rates, and from taking any other step or steps whatever, under the Constitution or laws of Virginia to enforce the requirements of said order.

And, whereas, By the order of this court said complainant is required to give to each person who travels upon its line, between points in the State of Virginia, upon a ticket purchased at a rate of more than two cents per mile, or by paying more than said rate to the conductor as cash fare, a receipt entitling such person or his transferee to a refund of the difference between the amount paid by him and what would have been by him in case the said order of the Corporation Commission of April 27, 1907, was in effect, provided that upon final hearing in this cause it should be decided that said order of April 27, 1907, is a valid, legal, and binding order.

And, whereas, Said order of this court provides, further, that the complainant shall, from time to time, and as directed by the judge of this court, pay into the registry of this court such sum or sums of money as shall be equal to the difference between the passenger rates charged and received by it in intrastate service on its
218 lines in the State and what would have been the aggregate amount for such service at the rates fixed in said order.

Now, Should said injunction be dissolved or vacated as having been wrongfully issued, or should it be decided in this cause that said order of April 27, 1907, is a valid, legal, and binding order, then the above-named Louisville & Nashville Railroad Company, in addition to paying into the registry of this court the sum or sums of money as herein provided, shall pay, or cause to be paid, all damages caused by the issue of said injunction and the costs of this cause in connection therewith; and upon its doing so, then, this

obligation to be null and void, otherwise to remain in full force and effect.

[Seal of Louisville & Nashville Railroad Company.]

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
By W. L. MAKOTHER, *First Vice President.*

Attest:
J. H. ELLIS, *Secretary.*

[Seal of American Surety Company of New York.]

AMERICAN SURETY COMPANY OF NEW YORK,
By ROBT. LEMASURIER, *Agent.*

219 *Interlocutory Injunction.*

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

The President of the United States of America, to Robert R. Prentis, Henry C. Stuart, Joseph E. Willard and Richard T. Wilson, Greeting:

The Honorable Judge of the Circuit Court of the United States for the Eastern District of Virginia, having on the 10th day of July, 1907, after due notice and hearing, ordered that an injunction issue as herein stated, to-wit:

1. That until the further order of the Court herein the defendants, Robert R. Prentis, Henry C. Stuart, and Joseph E. Willard, individually and as constituting the State Corporation Commission of Virginia and each and all of their successors in office, their and each of their servants, agents and employees be and they are hereby restrained and enjoined from publishing or having published in any newspaper published in the City of Richmond, Virginia, the general order of the State Corporation Commission of Virginia, bearing date the 27th day of April, 1907, in respect to passenger rates in the bill in this cause mentioned and from taking any other
220 step or steps whatsoever under the Constitution or laws of Virginia or otherwise to enforce the requirements of said order.

2. That until the further order of the Court herein, the defendant Richard T. Wilson, Clerk of the State Corporation Commission of Virginia, his successors in office and his servants, agents and employees be and they hereby are restrained and enjoined from publishing or having published said order of the State Corporation Commis-

sion of Virginia in any newspaper published in the City of Richmond.

3. That until the further order of the Court herein the owners, proprietors or managers of any newspaper published in the City of Richmond, Virginia, be and each and every one of them is hereby restrained and enjoined from publishing or having published under the direction of the State Corporation Commission of Virginia, or the Clerk thereof such order of the State Corporation Commission of Virginia.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at the City of Richmond, in the State of Virginia, this 10th day of July, A. D., 1907.

[Seal of United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Marshal's Return.

Executed July 11th, 1907, by delivering in person to Robert R. Prentis, Joseph E. Willard and R. T. Wilson at the office of the State Corporation Commission of Virginia in Richmond, Va., each a true copy of the within order, and further executed on the 13th day of July, 1907, by delivering in person to Henry C. Stuart at the office of the State Corporation Commission of Virginia in Richmond, Va., a true copy of the within order.

MORGAN TREAT,
United States Marshal.

221 *Demurrer of Robert R. Prentis to Bill of Complaint.*

Filed August Rules, Monday, August 5th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

The demurrer of Robert R. Prentis, one of the defendants to the above styled suit, to the bill of complaint of the above named complainant.

This defendant, by protestation not confessing or acknowledging all or any of the matters and things in the said plaintiff's bill to be true in such manner and form as the same are therein set forth and alleged, demurs thereto, and for cause of demurrer shows:

First. That the said plaintiff has not, in and by the said bill, made or stated any such cause as doth or ought to entitle it to any such relief as is thereby sought and prayed for;

222 *Second.* That this defendant has no personal or individual interest in the matters and things referred to in said bill;

Third. That the said plaintiff has an adequate remedy at law;

Fourth. That the matters and things complained of in said bill are *res adjudicata;*

Fifth. That this court has no jurisdiction to hear and determine this cause, for the reason that this is a suit against the State of Virginia;

Sixth. That this court has no jurisdiction to hear and determine this cause, for the reason that the State Corporation Commission is a "court" of the State of Virginia, and this court is therefore without power to enjoin the said Commission;

Seventh. That this court has no jurisdiction to hear and determine this cause, for the reason that, if said Commission is not such a "court" as this court is without power to enjoin, then the publication of said Commission's order of April 27th, 1907, was a necessary part of the enactment of the same as legislation, and this court is equally without power to enjoin legislation before it is enacted.

Wherefore, and for divers other good causes of demurrer appearing in said bill, this defendant demurs thereto, and humbly demands the judgment of this court whether he shall be compelled to

223 make any further answer to the said bill; and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

WILLIAM A. ANDERSON,
A. CAPERTON BRAXTON,
JNO. W. DANIEL.
Counsel for said Defendants.

We hereby certify that, in our opinion, the foregoing demurrer is well founded in point of law.

WILLIAM A. ANDERSON,
A. CAPERTON BRAXTON,
JNO. W. DANIEL.
Counsel for said Defendants.

STATE OF VIRGINIA, *City of Richmond, To-wit :*

Robert R. Prentis, being first duly sworn, deposes and says, that he is the defendant named in the foregoing demurrer; that said demurrer is not interposed for delay, and that the same is true in point of fact.

ROBERT R. PRENTIS.

Subscribed and sworn to before me this 3rd day of August, 1907.

JNO. S. EGGLESTON,
Notary Public for the City of Richmond, in the State of Virginia.

224 *Joint and Separate Plea of H. C. Stuart, Joseph E. Willard and R. T. Wilson to Bill of Complaint.*

Filed August Rules, Monday, August 5th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

The joint and separate plea of H. C. Stuart, Joseph E. Willard, and R. T. Wilson, three of the defendants to the above styled suit, to the bill of complaint of the above named complainant.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in said plaintiff's bill to be true in such manner and form as the same are therein set forth and alleged, for plea to the whole of said bill, say that they have no personal, private, or individual connection with the subject matter of this suit, but are only interested therein, or connected therewith in so far as the said Stuart and Willard are two of the three members of the State Corporation Commission of Virginia and said Wilson is Clerk thereof; that the said State Corporation Commission was created and established, and its functions, powers, duties, and
225 procedure prescribed and provided for, by the Constitution and statutes of said State (of which this court will take judicial notice) as will fully appear from "Defendants' Exhibit A," "Defendants' Exhibit B," "Defendants' Exhibit No. 1," and "Defendants' Exhibit No. 2," all of which said exhibits are filed with, and made a part of the Answer of the defendants herein to the Rule heretofore awarded in this cause, requiring said defendants to appear before the Honorable Jeter C. Pritchard, one of the Judges of this Court, at the City of Asheville, in the State of North Carolina, on the 27th day of June, 1907, and show cause why an injunction *pendente lite* should not issue, as prayed for in said bill of complaint, and which said exhibits are hereby referred to, and made a part of this plea as fully as if the same were herein set forth *in extenso*, and are prayed to be taken and read as a part of this plea; that the said constitutional and statutory provisions are still in full force and effect, and have been in full force and effect continuously since prior to the 1st day of January, 1904, and they represent the entire constitutional and statutory provisions of said State upon the subject of this plea or relating to the subject-matter of this suit, in effect at any time since the 1st day of January, 1904; that, on the 6th day of October, 1903, certain Rules of Order, Practice and Procedure before the said State Corporation Commission were duly made and prescribed by said Commission and entered upon the records of its proceedings, and also printed and distributed, all of which was au-

thorized by the aforesaid statutes, and was in accordance with the authority and provisions of said statutes; which said Rules of Order, Practice and Procedure are filed as "Defendants' Exhibit
226 No. 3" with, and made a part of, the aforesaid Answer of the defendants herein to the aforesaid Rule to show cause why an injunction *pendente lite* should not be awarded in this suit, as prayed for in said bill of complaint, and which said Exhibit is hereby referred to, and made a part of this plea as fully as if the same was herein set forth *in extenso*, and is prayed to be taken and read as a part of this plea; that the proceedings before the said State Corporation Commission, which are referred to in said bill of complaint, and in which the said Commission, on the 27th day of April, 1907, entered its order in respect to the passenger rates of the plaintiff, complained of in said bill of complaint, were taken and had before the said Commission in strict conformity, in every respect, with the provisions, hereinbefore referred to, of the Constitution and statutes of the said State, and of the said Rules of Order, Practice and Procedure, all of which will more fully and at large appear from sections *"Fifth"* and *"Eighth"* of the aforesaid Answer of the defendants herein to the aforesaid Rule to show cause why an injunction *pendente lite* should not be awarded in this suit, as prayed for in said bill of complaint, and from "Defendants' Exhibit No. 4" and "Defendants' Exhibit No. 5," which said Exhibits are filed with and made a part of the said Answer of the defendants herein to the aforesaid Rule, and which said Exhibits, and sections *"Fifth"* and *"Eighth"* of the said Answer to said Rule, (except in so far as said sections present any defense other than the sole defense interposed by and relied upon in this plea, viz: that this suit cannot be entertained by this court because of the inhibition of Sec. 720 of the Revised Statutes of the United States, hereinafter more particularly referred to,) are hereby referred to, and made
227 a part of this plea as fully as if the same were herein set forth *in extenso*, and are prayed to be taken and read as a part of this Plea; that the Commonwealth of Virginia was a formal plaintiff in the aforesaid proceedings before said Commission, referred to in said bill of complaint, and was required to be such, by the aforesaid laws of said State; that, under said laws, the said Commonwealth, as well as any defendant in said proceedings, may, as a matter of right, now appeal from said order of said Commission, of April 27th, 1907, to the Supreme Court of Appeals of Virginia; that, for the reasons next hereinafter pointed out, this honorable court is without power to enjoin the said Supreme Court of Appeals from hearing and deciding any such appeal, should the same be taken; that, by a certain Act of the Congress of the United States, which is printed and published as Section 720 of the Revised Statutes of the United States, it is provided that, "a writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except where such injunction may be authorized by any law relating to proceedings in bankruptcy"; that no injunction is, or ever has been, authorized to be granted in this suit "by any law relating to proceedings in bankruptcy"; that, as

will appear from the aforesaid constitutional and statutory provisions of the said State, and also from the decisions and opinions of the Supreme Court of Appeals of said State, which is the highest court of, and the court of last resort in, the said State, of which said opinions and decisions, as well as of which said constitutional and statutory provisions, this court will take judicial notice, the
228 said State Corporation Commission of Virginia is a "court" of the said State, within the true meaning, purport, intent, and purview of the aforesaid Act of Congress, and was acting as such "court" continuously from the inception of the aforesaid proceedings before it, referred to in said bill of complaint, up to and including the entry of its aforesaid order of April 27th, 1907, relating to the passenger rates of the plaintiff, and was also so acting in publishing said order, in accordance with the aforesaid laws of the said State, and was also so acting at the time this suit was instituted, and at the time the restraining order was granted in this suit, and will and must so act in any and all steps which it may hereafter take in respect to matters and things referred to in said bill of complaint; and these defendants say that this honorable court is without power to grant any of the relief prayed for in the said bill of complaint, or to entertain this suit, because no relief can be granted the plaintiff herein without enjoining said State Corporation Commission, which this court is forbidden to do by the aforesaid Act of Congress; all of which matters and things these defendants aver to be true, and they plead the same to the whole of the said plaintiff's bill, as aforesaid, and pray the judgment of this honorable court whether they ought to be required to make any other or further answer to the said bill, and pray to be hence dismissed, with their costs and charges in that behalf most wrongfully sustained.

JNO. W. DANIEL,
WILLIAM A. ANDERSON,
A. C. BRAXTON,
Counsel for said Defendants.

229 We hereby certify that, in our opinion, the foregoing plea is well founded in point of law.

JNO. W. DANIEL,
WILLIAM A. ANDERSON,
A. C. BRAXTON,
Counsel for Defendants.

STATE OF VIRGINIA, *City of Richmond, To-wit:*

H. C. Stuart, being duly sworn, deposes and says that he is one of the defendants named in the foregoing plea, and that the said plea is true in point of fact, and is not interposed for delay.

H. C. STUART.

Subscribed and sworn to before me, this 5th day of August, 1907.

JNO. S. EGGLESTON,
Notary Public for the City of Richmond, in the State of Virginia.

230 *Setting Down Demurrer of R. R. Prentis to be Argued.*

Filed September Rules, Monday, September 2nd, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

Now comes the Complainant, the Louisville and Nashville Railroad Company, by its Counsel in the above entitled case and moves the Court to set the demurrer filed by Robert R. Prentis, one of the defendants herein for argument.

H. L. STONE,
T. B. HARRISON, JR.,
Counsel for Complainant.

231 *Setting Down Joint and Separate Plea of Henry C. Stuart, Joseph E. Willard and R. T. Wilson to be Argued.*

Filed September Rules, Monday, September 2nd, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

Now Comes the Complainant, the Louisville and Nashville Railroad Company, by its counsel in the above entitled case and moves the court to set the plea filed by Henry C. Stuart, Joseph E. Willard and R. T. Wilcon, defendants herein, for argument, on the ground that the said plea does not furnish any sufficient defense to the bill of complaint herein filed.

H. L. STONE,
T. B. HARRISON, JR.,
Counsel for Complainant.

232 *Order Filing Plea of Res Adjudicata.*

Entered and Filed September 10th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

The Defendants by Counsel tendered to the Court a plea of *res adjudicata* to the Complainant's bill in this cause, and moved the Court to grant them leave to file said plea, whereupon it is ordered that said leave be given and the plea is accordingly filed.

And it is further ordered that leave be, and the same is hereby granted to the Complainant in this cause to set down the said plea to be argued, or take issue on said plea on or before the first day of the October Term 1907 of this Court.

J. C. PRITCHARD,
United States Circuit Judge.

September 10th, 1907.

233 *Plea of Res Adjudicata.*

Filed September 10th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump), H. C. STUART and JOSEPH E. WILLARD, Individually and as Constituting the State Corporation Commission of Virginia, and R. T. WILSON, Clerk of said Commission, Defendants.

The Joint and Several Plea of the Above Named Defendants to the Bill of Complaint of the Above Named Complainant.

These defendants respectively by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's said bill to be true in such manner and form as the same are therein set forth and alleged, for farther plea to the whole of said bill, say as follows:

That at a lawful session of the Virginia State Corporation Commission held on the 27th day of April, 1907, in the rooms of said Commission in the State Capitol in the City of Richmond, Virginia, said Commission entered up the final order and judgment and made

its final findings in the case then pending before said Commission known as The Virginia Passenger Rate Case, in which case the Commonwealth of Virginia was the plaintiff, and the said complainant here, and others were the defendants, which order and judgment and findings of said Commission were made pursuant to a certain notice to the complainant here, and the other steam railway companies operating lines of steam railway in the State of
234 Virginia, the defendants in said Passenger Rate Case, which notice, proceedings, and findings are set forth *in extenso* in Defendants' Exhibit No. 5, exhibited as a part of the Answer of these defendants, to the Rule heretofore awarded in this cause requiring these defendants and each of them to show cause before this Court or the Judge thereof in the United States Court Room at Asheville, North Carolina, at 10 o'clock on the 27th day of June, 1907, why an injunction *pendente lite* as prayed for in the said Bill should not be issued, to which exhibit now a part of the record in this cause, special reference is here made.

And these defendants aver that the said the State Corporation Commission of the State of Virginia which entered said order and judgment, and made said findings as set forth in said Exhibit No. 5, filed as part of said Answer, was at and before the said 27th of April, 1907, and has continued from said last mentioned date to be, and still is, and continues to be, a tribunal validly created and constituted under the Constitution and laws of said Commonwealth, and thereby duly invested and clothed with exclusive original jurisdiction and power in the matter of regulating and prescribing the charges which shall be made by the complainant and all other companies or corporations owning or operating railways in said State, for the transportation of passengers between points wholly within the territorial limits of Virginia, upon the lines of railway so owned or operated by any such company; and said Commission was, and is, and continues to be, at the date of, before, and since the said 27th of April, 1907, fully empowered by said Constitution and laws to control and regulate all such companies in respect to their duties to the public within the Commonwealth of Virginia, under and by virtue of the statutes, and sections of the Constitution of Virginia heretofore filed as part of the said Answer to said Rule as
235 Defendants' Exhibit No. 1, Defendants' Exhibit No. 2, and already made a part of the record in this cause.

And these defendants say further that the said State Corporation Commission, as it was required by law that it should do, accorded to the complainant here, one of the defendants in said Passenger Rate Case, a full and complete hearing, all proper judicial process, and all due process of law, and every opportunity to make every defense, and to assert every right which said complainant might desire, or be advised to assert in said case against the proposed reduction of the rates and fares theretofore charged by the complainant for the transportation of passengers on its lines within the State of Virginia.

And these defendants further say that the complainant here was duly made a party defendant in and to said Passenger Rate Case,

appeared before said tribunal therein upon the hearing and trial thereof by counsel, filed its Answer therein, introduced all of the testimony which it desired, or was advised to be necessary or proper for making its defense therein, both of witnesses heard and examined orally before said Commission, and of documentary and other written testimony filed before said Commission as part of the case of the said defendant, who is now the complainant here.

And these defendants further say that said tribunal (then consisting of Beverley T. Crump, said H. C. Stuart, and Joseph E. Willard), as it was its duty to do, proceeded and acted in all respects judicially in the hearing of said case, and in all of the proceedings had in connection therewith, and judicially investigated and considered all the questions and matters passed upon by said Commission in said case, or which were pertinent to the questions and matters presented therein, and in making its findings, and entering its order, and judgments aforesaid, as will appear from the

236 Exhibits filed as part of their aforesaid Answer to said Rule.

And these defendants further say that the same identical matters, and every matter, and every question which is presented or raised by the Bill of Complaint here, and every ground of complaint or of defense against the proposed action of said Commission, which the complainant seeks to assert here against the justness and reasonableness or the legality of the rates adjudicated, fixed, and prescribed in said case by said State tribunal for the transportation of passengers by the complainant upon its lines in Virginia, was presented, involved, raised, heard, tried, and passed upon, adjudicated, and finally decided by said State Corporation Commission of Virginia in due and legal manner and form in said Virginia Passenger Rate Case, in which the said Commonwealth was the plaintiff, and the complainant here was a defendant, and that said State Corporation Commission thereupon rendered and entered up its aforesaid final decision, order, and judgment upon the merits, upon the very same identical matters now sued upon in this cause.

Wherefore these defendants now here specially plead and rely upon said former judgment, in bar to the said plaintiff's present Bill, and humbly demand the judgment of this Honorable Court whether they shall be required to make any further defense thereto, and respectfully pray to be hence dismissed with their costs and charges in this behalf sustained.

WILLIAM A. ANDERSON,
JNO. W. DANIEL,
A. CAPERTON BRAXTON,
Of Counsel for Defendants.

237 I hereby certify that in my opinion the foregoing plea is well founded in law.

WILLIAM A. ANDERSON,
Of Counsel for Defendants.

STATE OF VIRGINIA, *City of Richmond, To-wit:*

R. T. Wilson, being duly sworn deposes and says that he is one of the above named defendants, and that the foregoing plea is true in point of fact, and is not interposed for delay.

R. T. WILSON.

Subscribed and sworn to before me in my City aforesaid this the 10th day of September, 1903.

T. GRAY HADDON,
Notary Public in and for Richmond City.

238 *Setting Down Plea of Res Adjudicata to be Argued.*

Filed October Rules, Monday, October 7th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

Now comes the complainant, the Louisville and Nashville Railroad Company, by its Counsel in above entitled case and moves the Court to set the plea of *res adjudicata* filed by R. R. Prentis, H. C. Stuart and Jos. E. Willard individually, and as constituting the State Corporation Commission of Virginia, and R. T. Wilson, defendants herein, for argument on the ground that the said plea does not furnish any sufficient defense to the bill of complaint herein filed.

T. B. HARRISON, JR.,
Counsel for Complainant.

239 *Final Decree.*

Entered and Filed December 26th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

This cause came on this 26th day of Dec., 1907, to be heard upon the Bill of Complaint, with the exhibits therewith filed, and upon the papers formerly filed herein, including the special and limited appearance of the defendants at Rules, and their joint and

separate answer to the Rule herein returnable on June 27th, 1907, and upon the proceedings and orders heretofore had and entered herein, and upon the demurrer of Robert R. Prentis (substituted defendant for Beverley T. Crump), which has been duly set down to be argued, and upon the joint and separate plea of Henry C. Stuart, Joseph E. Willard and R. T. Wilson, three of the defendants in the above suit, filed in this cause on the 5th day of August, 1907, which said plea has also been duly set down to be argued, and upon the joint and several plea of *res adjudicata* filed by leave of court on the 10th day of September, 1907, in this cause by Robert R. Prentis (substituted defendant for Beverley T. Crump),

240 Henry C. Stuart, and Joseph E. Willard, individually and as constituting the State Corporation Commission of Virginia, and R. T. Wilson, Clerk of said Commission, which said plea of *res adjudicata* has also been duly set down to be argued;

And this cause having been fully argued by counsel, and the court being of the opinion that the demurrer of said defendant Robert R. Prentis is not well founded in law, it is now adjudged, ordered and decreed that the said demurrer be and the same is hereby over-ruled;

And the court, being further of the opinion that the joint and separate plea of the said Henry C. Stuart, Joseph E. Willard and R. T. Wilson, set down to be argued as aforesaid, is also not sufficient in law, the court doth now further adjudge, order and decree that the said plea be and the same is hereby over-ruled as not being good in law;

And the court being further of the opinion that the joint and several plea of *res adjudicata* of Robert R. Prentis (substituted defendant for Beverley T. Crump), Henry C. Stuart and Joseph E. Willard, individually and as constituting the State Corporation Commission of Virginia, and R. T. Wilson, Clerk of said Commission, set down to be argued as aforesaid, is also not sufficient in law, the court doth now further adjudge, order and decree that the said plea of *res adjudicata* be and the same is hereby over-ruled as being not good in law;

And the said Robert R. Prentis standing upon his demurrer, and the said Henry C. Stuart, Joseph E. Willard and R. T. Wilson standing upon the said joint and separate plea filed in this cause on the 5th day of August, 1907, and the said Robert R.

241 Prentis (substituted defendant in the place of Beverley T. Crump) Henry C. Stuart and Joseph E. Willard, individually and as constituting the State Corporation Commission of Virginia, and R. T. Wilson, Clerk of said State Corporation Commission, standing upon said plea of *res adjudicata* filed in this cause on the 10th day of September, 1907, and upon the joint and separate Answer of the defendants to said Rule returnable on June 27th, 1907, and not answering further, it is now, upon consideration thereof, finally adjudged, ordered and decreed that the Bill of Complaint in this cause be and the same is hereby taken for confessed;

It is therefore accordingly adjudged, ordered and decreed by the

court that the injunction heretofore granted in this cause against said defendants be made perptual and

1. That the defendants, Robert R. Prentis, Henry C. Stuart, and Joseph E. Willard, individually and as constituting the State Corporation Commission of Virginia, and each and all of their successors in office, their servants, agents, and employees, and each of them, be and they are hereby perpetually enjoined from publishing or having published in any newspaper published in the city of Richmond, or elsewhere in Virginia, the general order of said Commission, bearing date April 27, 1907, in respect to and reducing passenger rates in the bill in this cause mentioned, and from taking any other step or steps whatsoever under the Constitution or laws of Virginia heretofore or hereafter enacted, or otherwise, to publish, make effective, or enforce the requirements or any requirement of said order, the enforcement of which in any manner or by any means, is per-
242 petually enjoined in so far as the complainant, Louisville & Nashville Railroad Company, or its line of railroad in Virginia, is concerned or affected by said order.

2. That the defendant, Richard T. Wilson, Clerk of said Commission, his successors in office, his servants, agents, and employees and each of them be and they are hereby perpetually enjoined from publishing or having published said order of said Commission in any newspaper published in the City of Richmond, or elsewhere in Virginia so far as said order concerns or affects the complainant or its line of railroad in Virginia.

3. That the owners, proprietors, or managers of any and all newspapers published in the City of Richmond, or elsewhere in Virginia, be and they are, each and every one of them, hereby perpetually enjoined from publishing or having published under the direction of the State Corporation Commission of Virginia, or the Clerk thereof, or any one acting for or on behalf of said Commission, the said order of April 27, 1907, with respect to and reducing passenger rates, so far as the same concerns or affects the complainant or its line of railroad in Virginia.

4. That the bonds heretofore given by the complainant in this cause, be, and the same hereby are, released and canceled, and the Complainant and the sureties thereon are hereby released and discharged from any and all liability in respect thereto.

5. That a writ of injunction issue out of this Court, and under the seal thereof, directed to the said defendants, commanding, enjoining and restraining them, as hereinbefore set forth, which injunction shall be perpetual, save as hereinafter provided.
243 But it is further adjudged, ordered and decreed that the defendants, members of, and the clerk to, the said Corporation Commission of Virginia, respectively, as set forth in these proceedings, may hereafter, in the event that the circumstances and conditions shall have changed so that the rates fixed in the order entered by said Commission on the 27th day of April, 1907, shall not, under such changed circumstances and conditions, be in violation of the constitutional rights of the Complainant invoked in the Bill of Complaint in this suit, apply to this court by such proper

proceedings as they may be advised for a further order in t
behalf;

And it is further adjudged, ordered and decreed that the Co
plainant recover of the defendants its costs in this behalf expend
to be taxed by the Clerk.

J. C. PRITCHARD,
U. S. Circuit Court

December 26th, 1907.

244 *Injunction.*

In the Circuit Court of the United States for the Eastern District
Virginia. In Equity.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Complainan
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crum
HENRY C. STUART, JOSEPH E. WILLARD, and R. T. WILSON,
fendants.

The President of the United States of America to Robert R. Pren
Henry C. Stuart, Joseph E. Willard, and R. T. Wilson, and
their agents, servants and employees and successors in office, a
each and every of them, and to the owners, proprietors and m
agers of all newspapers published in the City of Richmond, V
ginia, and each of them, Greeting:

Whereas the Honorable Judge of the Circuit Court of the Uni
States for the Eastern District of Virginia, has on the 26th day
December, 1907, made perpetual the interlocutory injunct
awarded in the above-styled cause on the 10th day of July, 1907

Now, therefore:

1. The defendants Robert R. Prentis, Henry C. Stuart, and
seph E. Willard, individually and as constituting the State C
poration Commission of Virginia, and each and all of their s
cessors in office, their servants, agents, and employees, and each
them, be and they are hereby perpetually enjoined fr
245 publishing or having published in any newspaper publis
in the city of Richmond, or elsewhere in Virginia, the g
eral order of said Commission, bearing date April 27, 1907, in
spect to and reducing passenger rates in the bill in this cause m
tioned, and from taking any other step or steps whatsoever un
the Constitution or laws of Virginia heretofore or hereafter enac
or otherwise, to publish, make effective, or enforce the requireme
or any requirement of said order, the enforcement of which in
manner or by any means, is perpetually enjoined in so far as
complainant, Louisville & Nashville Railroad Company, or its
of railroad in Virginia, is concerned or affected by said order.

2. The defendant, Richard T. Wilson, Clerk of said Commiss
his successors in office, his servants, agents, and employees and e
of them be and they are hereby perpetually enjoined from publ

ing or having published said order of said Commission in any newspaper published in the City of Richmond, or elsewhere in Virginia so far as said order concerns or affects the complainant or its line of railroad in Virginia.

3. The owners, proprietors, or managers of any and all newspapers published in the City of Richmond, or elsewhere in Virginia, be and they are, each and every one of them, hereby perpetually enjoined from publishing or having published under the direction of the State Corporation Commission of Virginia, or the Clerk thereof, or any one acting for or on behalf of said Commission, the said order of April 27, 1907, with respect to and reducing passenger rates, so far as the same concerns or affects the complainant or its line
246 of railroad in Virginia.

Hereof fail not under penalty of the law thence ensuing.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at the City of Richmond, Virginia, in said District, this Thirteenth day of January, in the year of our Lord one thousand nine hundred and eight, and of our Independence the 132nd year.

[Seal of United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Marshal's Return.

Executed January 13th, 1908, by delivering in person in the City of Richmond, Va., to Robert R. Prentis, Henry C. Stuart, Joseph E. Willard, R. T. Wilson and to Joseph Bryan, he being the President of the Richmond Times-Dispatch Co., a newspaper published in the City of Richmond, Va., and to Alfred B. Williams, he being the President of the News-Leader, a newspaper published in the City of Richmond, Va., and to A. R. Holderby, Jr., he being the Secretary-Treasurer and likewise a director of the Evening Journal, a newspaper published in the City of Richmond, Va., to each of them a true copy of this injunction order.

MORGAN TREAT,
United States Marshal.

247 *Petition for Appeal.*

Filed December 26th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump), HENRY C. STUART, JOSEPH E. WILLARD, and R. T. WILSON, Defendants.

To the Honorable J. C. Pritchard, Judge of said Court:

Your petitioners, the above-named defendants, and each of them, individually, and also in the capacity in which they are respectively impleaded in this cause, respectfully represent and complain that, in the record and proceedings had in said cause, and also in the final decree entered in said cause, on the 26th day of December, 1907, by the said court at its present term, manifest error hath happened and been committed, to the great injury and damage of said defendants.

Wherefore, the said defendants, and each of them, individually and also in the capacity in which they are respectively impleaded in said cause, conceiving themselves aggrieved, by said error, as aforesaid, hereby respectfully appeal from said decision and decree to the Supreme Court of the United States; and they pray that this, their said appeal, may be allowed, and that a transcript of the record, papers, and proceedings, upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States; and also that an order be made fixing the amount of

248 security which said defendants shall give and furnish upon such appeal.

Accompanying this petition are the assignments of error required by the rules of the said last-named court, and said defendants are ready to give and furnish the bond likewise required by said rules.

And your petitioners will ever pray, etc.

Dated December 26th, 1907.

WILLIAM A. ANDERSON,
Richmond, Va.,
A. C. BRAXTON,
Richmond, Va.,
JOHN W. DANIEL,
Lynchburg, Va.,
Attorneys and Solicitors for the said Defendants and Appellants.

249 *Assignment of Errors.*

Filed December 26th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump), HENRY C. STUART, JOSEPH E. WILLARD, and R. T. WILSON, Defendants.

Come now the said defendants, and each of them individually, and also in the capacity in which they are respectively impleaded in this cause, and file the following assignment of errors along with and accompanying their petition for appeal from the final decree entered by this Honorable Court, at its present term, on the 26th day of December, 1907, in the above-entitled cause, upon which errors they and each of them will rely, upon their said appeal:

First.

That the court erred in assuming, asserting and retaining jurisdiction of said defendants, and of said cause.

Second.

That the court erred in not sustaining the validity of the several constitutional and statutory provisions of the laws of Virginia, creating the State Corporation Commission of Virginia, and prescribing its powers and modes of procedure, which said provisions are set forth in the record of said cause, and which were, by the complain-
250 ant in said cause, "claimed to be in contravention of the Constitution of the United States"

Third.

That the court erred in finding and adjudging that the "law" of the Commonwealth of Virginia, embodied in and created by the order of the State Corporation Commission of Virginia, dated April 27th, 1907, and set forth in the record of said cause, was, as "claimed to be," by the complainant in said cause, "in contravention of the Constitution of the United States."

Fourth.

That the court erred in overruling the demurrer to the bill in said cause.

Fifth.

That the court erred in overruling the joint and separate plea filed by three of the defendants in said cause on August 5th, 1907.

Sixth.

That, if the court had jurisdiction of said cause, and of said defendants, then it erred in overruling the plea of *Res Adjudicata* filed by the defendants in said cause.

Seventh.

That the court erred in not making, rendering and entering a decree in favor of the said defendants, and against the said complainant.

The foregoing specific assignments of error cover, it is believed, the requirements of the Rule under which they are filed; but the said defendants, as Appellants, by their counsel, in view of the im-
251 portance of this cause and the wide range of subjects necessarily involved in its proper consideration and determination, will pray the Honorable, the Supreme Court of the United States, for leave to discuss, at the hearing, all the subjects involved in said appeal, and not to confine them to the specific points designated above.

Wherefore, the said defendants, as Appellants, pray that the final decision and decree of the said court in this cause be reversed by the Supreme Court of the United States, and the said Circuit Court of the United States for the Eastern District of Virginia be directed to enter an order, dismissing this cause, at the costs of said complainant.

Dec. 26th, 1907.

WILLIAM A. ANDERSON,
A. C. BRAXTON,
JOHN W. DANIEL,
Attorneys and Solicitors for the said Defendants and Appellants.

252 *Order Allowing Appeal and Fixing Amount of Bond.*

Entered and Filed December 26th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump) and Others, Defendants.

Upon motion of William A. Anderson, A. Caperton Braxton and John W. Daniel, Esquires, counsel for defendants, and on filing petition of Henry C. Stuart, Joseph E. Willard, Robert R. Prentis, and R. T. Wilson, individually and also in the capacity in which they are respectively herein impleaded, for an order allowing an

appeal, together with an assignment of errors accompanying the said petition,

It is ordered, on this, the 26th day of December, 1907, that an appeal be, and is hereby in open court allowed to the Supreme Court of the United States from the final order and decree entered herein on the 26th day of December, 1907, at this term of this court, perpetuating the injunction heretofore awarded against said defendants; that the amount of the bond upon said appeal be, and hereby is, fixed at the sum of One Thousand Dollars; and that a certified transcript of the record and proceedings herein be forthwith transmitted to the Supreme Court of the United States.

December 26th, 1907.

J. C. PRITCHARD,
U. S. Circuit Judge.

253 *Appeal Bond.*

Filed January 14th, 1908.

Know all men by these presents, That we, Richard T. Wilson of Richmond, Virginia, as principal, and Virginia Trust Company, as surety, are held and firmly bound unto Louisville and Nashville Railroad Company in the full and just sum of One Thousand Dollars to be paid to the said Louisville and Nashville Railroad Company, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated the 14th day of January, in the year of our Lord one thousand nine hundred and eight.

Whereas, lately at a Circuit Court of the United States for the Eastern District of Virginia, in a suit depending in said Court, *between* Louisville and Nashville Railroad Company, is Complainant, and Robert R. Prentis (Substituted defendant for Beverley T. Crump), Henry C. Stuart, Joseph E. Willard and Richard T. Wilson are Defendants, a decree was rendered against the said Robert R. Prentis, (Substituted defendant for Beverley T. Crump), Henry C. Stuart, Joseph E. Willard, individually, and as constituting the State Corporation Commission of Virginia, and Richard T. Wilson, Clerk of the said State Corporation Commission of Virginia, and the said Robert R. Prentis, (Substituted defendant for Beverley T. Crump), Henry C. Stuart, Joseph E. Willard, individually, and as constituting the State Corporation Commission of Virginia, and Richard T. Wilson, Clerk of the said State Corporation Commission of Virginia, having obtained an appeal to reverse the decree in the aforesaid suit, and a citation directed to the said Louisville and

254 Nashville Railroad Company citing and admonishing it to be and appear at a Supreme Court of the United States, at the city of Washington, on the day in the said citation mentioned:—

Now, the condition of the above obligation is such, That if the said Robert R. Prentis, (Substituted defendant for Beverley T. Crump), Henry C. Stuart, Joseph E. Willard and Richard T. Wil-

son shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

RICHARD T. WILSON. [SEAL.]
VIRGINIA TRUST CO.,
By L. D. AYLETT, *Sec'y.*

[Seal of Virginia Trust Co.]

Sealed and delivered in presence of
JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Approved by—
J. C. PRITCHARD,
United States Circuit Judge.

255 *Citation.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Louisville and Nashville Railroad Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the city of Washington, on the 10th day of February, A. D. 1908, pursuant to an appeal, duly allowed by the Circuit Court of the United States for the Eastern District of Virginia, and filed in the clerk's office of said Court on the 26th day of December, A. D. 1907; in a cause wherein Robert R. Prentis, (Substituted defendant for Beverley T. Crump), Henry C. Stuart and Joseph E. Willard, individually, and as constituting the State Corporation Commission of Virginia, and R. T. Wilson, Clerk of said State Corporation Commission of Virginia, are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable J. C. Pritchard, Judge of the Circuit Court of the United States for the Eastern District of Virginia, this 14th day of January, in the year of our Lord one thousand nine hundred and eight, and of our Independence the 132nd year.

J. C. PRITCHARD,
United States Circuit Judge.

Service of the above citation is hereby admitted this 17th day of January, 1908.

HENRY L. STONE,
Attorney for Appellee (Louisville, Kentucky).

256 *Order Transmitting Record.*

And, thereupon, it is ordered by the Court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the Supreme Court of the United States and the same is transmitted accordingly.

Teste:

JOSEPH P. BRADY, *Clerk.*

Certificate of Clerk.

UNITED STATES OF AMERICA, *Eastern District of Virginia, ss:*

I, Joseph P. Brady, Clerk of the Circuit Court of the United States for the Eastern District of Virginia, in the Fourth Judicial Circuit, do certify that the above and foregoing is a full, true and correct transcript of the record and proceedings of said Circuit Court, together with all things thereunto relating, in the therein entitled cause.

In testimony whereof, I hereunto set my hand and affix the seal of said Circuit Court, at the City of Richmond, Virginia, this 3d day of February, A. D. 1908.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Endorsed on cover: File No. 21,012. E. Virginia C. C. U. S. Term No. 273. Robert R. Prentis, Henry C. Stuart, and Joseph E. Willard, individually and as constituting the State Corporation Commission of Virginia, *et al.*, appellants, *vs.* Louisville & Nashville Railroad Company. Filed February 10th, 1908. File No. 21,012.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 274.

ROBERT R. PRENTIS, HENRY C. STUART, AND [illegible] E. WILLARD, INDIVIDUALLY AND AS CONSTITUTING THE STATE CORPORATION COMMISSION OF VIRGINIA, AND R. T. WILSON, CLERK OF THE STATE CORPORATION COMMISSION OF VIRGINIA, APPELLANTS,

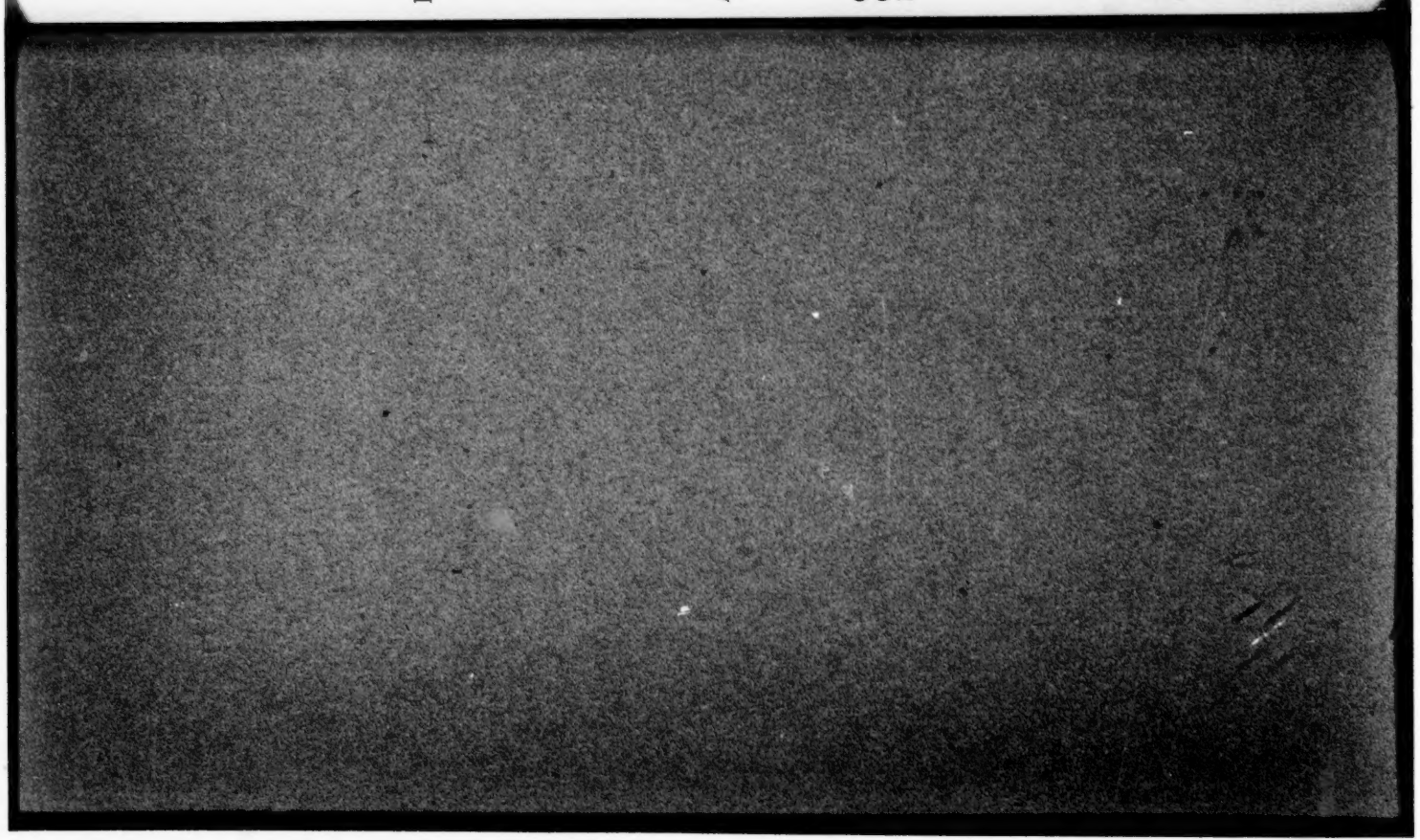
vs.

NORFOLK AND WESTERN RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

[illegible]

(FILED.)



(21,013.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 274.

ROBERT R. PRENTIS, HENRY C. STUART, AND JOSEPH E. WILLARD, INDIVIDUALLY AND AS CONSTITUTING THE STATE CORPORATION COMMISSION OF VIRGINIA, AND R. T. WILSON, CLERK OF THE STATE CORPORATION COMMISSION OF VIRGINIA, APPELLANTS,

vs.

NORFOLK AND WESTERN RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

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a UNITED STATES OF AMERICA, *ss:*

The President of the United States to Norfolk and Western Railway Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the city of Washington, on the 10th day of February, A. D. 1908, pursuant to an appeal, duly allowed by the Circuit Court of the United States for the Eastern District of Virginia, and filed in the clerk's office of said Court, on the 26th day of December, A. D. 1907: in a cause wherein Robert R. Prentis, (Substituted defendant for Beverley T. Crump), Henry C. Stuart and Joseph E. Willard, individually, and as constituting the State Corporation Commissoin of Virginia, and R. T. Wilson, Clerk of said State Corporation Commission of Virginia, are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable J. C. Pritchard, Judge of the Circuit Court of the United States for the Eastern District of Virginia, this 14th day of January, in the year of our Lord one thousand nine hundred and eight, and of our Independence the 132nd year.

J. C. PRITCHARD,
United States Circuit Judge.

Service of the above citation is hereby admitted this 15th day of January, 1908.

JOSEPH I. DORAN,
LUCIAN H. COCKE,
Attorneys for Appellee.

(Addresses: Joseph I. Doran, Philadelphia, Penn., Lucian H. Cocke, Roanoke, Va.)

b [Endorsed:] No. 578. Circuit Court of the U. S. Eastern District of Virginia. In Equity. Norfolk and Western Railway Company, Complainant, *vs.* Robert R. Prentis (Substituted defendant for Beverley T. Crump), and others, Defendants. Citation. Filed this — day of —— 190–. ——, Clerk.

1 *Transcript of Record.*

UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

At a Circuit Court of the United States for the Eastern District of Virginia, begun and held at the Court Rooms in the Custom House, in the City of Richmond, Virginia, on the first Monday in October, being the seventh day of the same month, in the year of our Lord one thousand nine hundred and seven.

Present: The Honorable J. C. Pritchard, Judge of the Circuit Court of the United States for the Eastern District of Virginia.

Among other were the following proceedings, to-wit:

In Equity.

NORFOLK AND WESTERN RAILWAY COMPANY, Complainant,
versus
ROBERT R. PRENTIS (Substituted Defendant for Beverley T. Crump), HENRY C. STUART, and JOSEPH E. WILLARD, Individually and as Constituting the State Corporation Commission of Virginia, and RICHARD T. WILSON, as Clerk of the State Corporation Commission of Virginia, Defendants.

2 *Bill of Complaint.*

Filed May 15th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia, to-wit:

In Equity.

NORFOLK AND WESTERN RAILWAY COMPANY, Complainant,
vs.
BEVERLEY T. CRUMP, H. C. STUART, JOS. E. WILLARD, and R. T. WILSON, Defendants.

To the Honorable Judges of said Court:

The Bill of Complaint of Norfolk and Western Railway Company, a corporation of the State of Virginia, duly organized and existing under and by virtue of the laws of that State, having its principal office in the City of Roanoke, in the State of Virginia, and being a citizen of said State, against Beverley T. Crump, Henry C. Stuart, Joseph E. Willard, and R. T. Wilson, defendants, all of said defendants being likewise citizens of the State of Virginia.

And thereupon your Complainant says:

1. That the complainant is a railroad company duly created, organized, existing and doing business under the laws of the State of Virginia, and in particular under the Act of the General
3 Assembly of State approved January 15th, 1896, entitled "An Act authorizing the purchasers of the railroads and property of the Norfolk and Western Railroad Company sold by foreclosure of a deed of trust or mortgage thereon to become and be a corporation to adopt a name therefor, and to possess and exercise general and other powers," the purchasers of the mortgaged premises of the Norfolk and Western Railroad Company referred to in said Act of Assembly of Virginia, together with their associates having, on or about the 24th day of September, 1896, under and in pursuance to said Act of Assembly and in the manner therein provided, become and been constituted a new corporation or body cor-

porate under the name of "Norfolk and Western Railway Company" they having in accordance with the laws of Virginia and in particular with said Act of Assembly selected the said name as the name of such new corporation. A true copy of the certificates of organization together with the Schedules thereto attached made and filed by the Norfolk and Western Railway Company in the office of the Secretary of the Commonwealth of Virginia in pursuance to said Act of Assembly are filed herewith as a part of this Bill marked Exhibit A, one — which Schedules—Schedule A—is a true copy of said Act of Assembly of Virginia approved January 15th, 1896.

This complainant was duly organized into a corporation on or about the 24th day of September, 1896, under and by virtue of said Act of Assembly of Virginia approved January 15th, 1896, and is now and has continuously since then been a corporation existing and doing business under the said laws of the State of Virginia and the general statutes of that State applicable thereto.

2. That by the terms of its charter and the franchises possessed by it it was and is authorized to own, or lease and operate lines of railroad in other States as well as in Virginia, and under and by virtue of such powers, and under and by virtue of due authority from the States about to be mentioned, the complainant owns, or leases, and operates, and continuously since its said organization has owned or leased and operated lines of railroad in the States
4 of Virginia, West Virginia, Ohio, North Carolina, Maryland and Kentucky.

The railroads acquired by the Norfolk and Western Railway Company pursuant to the plan of reorgani-ation of the Norfolk and Western Railroad Company under the laws of Virginia and in particular under said Act of Assembly of Virginia of January 15, 1896, and subsequently acquired or leased by it under its charter the franchises possessed by it and the laws of Virginia and under the laws of the states through which its lines of railroads run, and which it now so owns or leases and operates or has owned or leased and operated (omitting lines worked under trackage rights) during the years ending June 30th, 1905, and June 30th, 1906, and the nine months ending March 31st, 1907, aggregate the total mileage with the mileage in each state as follows:—

	June 30, 1905.	June 30, 1906.	March 31, 1907.
Virginia	1,060.27	1,060.26	1,060.26
West Virginia	403.47	430.83	431.92
Ohio	264.09	264.10	264.10
North Carolina	89.82	89.82	89.82
Maryland	15.58	15.58	15.58
Kentucky	.29	.29	.29
Total Mileage	1,833.52	1,860.88	1,861.97

3. That the complainant is, and continuously since its organization aforesaid has been, engaged in doing an intrastate business as a common carrier of freight and passengers in the State of Virginia,

and, in addition, is, and continuously since its said organization has been engaged in doing as a common carrier of freight and passengers a large interstate business in said State of Virginia, and in and between said State and the other States aforesaid, and other States of the United States, and in and between other States and Territories of the United States, and also is, and since its said
5 organization has been, engaged in said State and the other States aforesaid in foreign commerce with other countries.

4. The complainant shows that there has been established in the State of Virginia by a provision of the Constitution of that State a commission, denominated in said Constitution the State Corporation Commission. The constitutional provisions referred to, establishing such commission, are contained in sections of the Constitution of Virginia numbered 155 and 156, herewith filed as a part of this bill and marked Exhibit B to which special reference is hereby made.

The complainant respectfully shows that it is advised and believes that said provisions in the Constitution of the State of Virginia seek to confer upon the said commission administrative, executive, legislative and judicial powers and functions in respect to the same matter, and, as applied and proposed to be applied to this complainant and to its property in the premises, do not constitute due process of law, nor afford to this complainant the equal protection of the laws, within the meaning of the Fourteenth Amendment to the Constitution of the United States.

This complainant further and additionally pleads and shows that Section five of the bill of rights of Virginia, which in the Constitution of that State is declared to be "the basis and foundation of government," provides as follows:

"That the legislative, executive, and judicial departments of the State should be separate and distinct;"

and the 39th Section of the Constitution of Virginia provides:

"Except as hereinafter provided, the legislative, executive, and judiciary departments shall be separate and distinct, so that neither exercise the powers properly belonging to either of the others,
6 nor any person exercise the power of more than one of them at the same time."

The single exception alluded to in Section 39 of said Constitution embraces matters relating to the performance by transportation and transmission companies of their public duties and their charges therefor, in regard to which alone the separation of the legislative, executive and judicial departments is by the Constitution of Virginia denied.

While, therefore, for the protection of every other interest in Virginia, a judicial tribunal is provided by the constitution and laws of that State which is not clothed with legislative and executive functions in respect to the matters in which it is required to exercise its judicial functions, and, therefore, by the law of its creation, is capable of judicial consideration and judicial action in respect to them, this, by the constitutional system of Virginia, is denied to transportation and transmission companies in respect to controversies arising about their public duties and their charges therefor. In

respect to these, the said Commission has been established by the Constitution, which seeks to impose, and, if valid, does impose upon the Commission the duty, or invest it with the power, of instituting proceedings before itself in respect to the public duties of transportation and transmission companies and their charges therefor, without any other party complainant except the Commission itself; of legislating thereon and making rules and orders in respect thereto, after the proceedings have been thus instituted before it by itself; of enforcing, as a court, compliance with the orders or requirements which it has made in the matters thus brought before it and thus legislated on or ruled upon, and, in the same matters, of adjudging or enforcing against the defendants the fines and penalties prescribed or authorized by the Constitution or by law.

7 The Complainant is advised, believes and respectfully submits that this Commission, by the law of its creation, is thus, and is otherwise, as will appear from the said Constitution, made incapable of the judicial consideration and judicial action in respect to the large interests above mentioned of transportation and transmission companies which due process of law requires; and in the knowledge that it has powers as a judicial tribunal to pass upon the validity of its acts in the other capacities referred to, it is put in a position of freedom from the usual and necessary restraints of legislative bodies in respect to matters about which it may legislate. In subjecting these large interests to a tribunal thus created, and denying to them the protection of judicial tribunals which are not clothed with legislative, administrative and executive functions in respect to matters in which they are called upon to exercise their judicial functions, such as are provided for every other interest in the State by the Constitution and laws of Virginia, and in subjecting them to the legislative power of this tribunal, unlimited and unchecked by the ordinary and orderly responsibility to an independent judicial tribunal, the said Constitution not only does not constitute, in respect to transportation and transmission companies, due process of law, but it likewise denies to them the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States, which provides that no State shall deprive any person of its property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

And the complainant respectfully prays the benefit and protection of the said Fourteenth Amendment to the Constitution of the United States in respect to the action of the said Commission, hereinafter mentioned in this bill.

5. Acting under the alleged authority of sub-section (*b*) of Section 156 of the Constitution of Virginia, aforesaid, the State Corporation Commission, on the thirty-first day of July, 1906, issued the following notice:

8 "*Notice.*

Office of the State Corporation Commission.

RICHMOND, VA., 31*st Day of July,* 1906.

To the Several Steam Railroad Companies Doing Business in Virginia and all Persons Interested:

Take notice that the State Corporation Commission will, in the City of Richmond, on Thursday, the first day of November, 1906, at 12 o'clock, noon, in accordance with the authority conferred by the Constitution of Virginia, and the statutes enacted by the General Assembly of Virginia pursuant thereto, hear and consider any objections which may be urged against a rule, regulation, order or requirement of the Commission fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers over the line of any railroad company in this State, operated by steam, between points within the State of Virginia said maximum rate to be observed whether the transportation be entirely over the line of one railroad company, or joint transportation over the lines of two or more companies; and whether the contract for transportation of a passenger or passengers be evidenced by an ordinary ticket between stations, by a mileage book or otherwise; the Commission to have as authorized by law, the power and authority from time to time, and as often as circumstances may require, to change or revise the rate, or by rules, regulations and requirements to provide for the more convenient and expedient putting into effect and proper observance of said maximum rate. At the said hearing and consideration of the said maximum rate of two cents per mile, the method, time and extent of promulgation and putting into effect of the same will be heard and determined by the Commission, to the end that a maximum rate for passenger transportation may be put into effect and be made applicable to all steam railroad
9 companies doing business in Virginia, and be properly observed by them in the transportation of passengers.

BEVERLEY T. CRUMP, *Chairman;*
H. C. STUART,
JOSEPH E. WILLARD,
Commissioners."

This notice complainant is informed and believes was published once a week for four consecutive weeks in the Times-Despatch, a newspaper of general circulation, published in the City of Richmond, Virginia.

In accordance with said notice, the Complainant appeared before the Commission on or about the first day of November, 1906, and filed an answer, a copy whereof is herewith filed as a part of this bill marked Exhibit C, duly signed and sworn to showing objections against the proposed maximum passenger rate of two cents per mile, and thereafter, in due course, introduced evidence before said Commission to show the reasons why the said maximum passenger rate

of two cents per mile should not be established. Notwithstanding this, however, and notwithstanding the fact that the evidence before the Commission conclusively showed, as this Complainant is advised, informed and therefore avers that the said maximum passenger rate of two cents per mile should not, in justice, and could not constitutionally, be established to govern the passenger rates of this Complainant in the State of Virginia, and that to attempt to establish the same would amount to confiscation of this Complainant's property, contrary to the Fourteenth Amendment to the Constitution of the United States, and would be in violation of other provisions of the Constitution of the United States, the said Commission on the twenty-seventh day of April, 1907, entered the following order:

10 "COMMONWEALTH OF VIRGINIA at the Relation of THE STATE CORPORATION COMMISSION

vs.

STEAM RAILROAD COMPANIES.

In the Matter of Prescribing a Maximum Passenger Rate.

CITY OF RICHMOND, *27th Day of April*, 1907.

The State Corporation Commission having carefully considered all the proceedings herein, and all the testimony, exhibits and statements adduced and filed before it in this proceeding, and having put its conclusions in writing, which are made a part of the record herein, the Commission, in order to carry out its said conclusions, now makes the following order and regulations and prescribes the following maximum rates to be observed by all the steam railroad companies operating in the State of Virginia in the transportation of passengers.

1. *It is Ordered*, That on and after the first day of July, 1907, the following steam railroad companies, viz:

Norfolk & Western Railway Company
Chesapeake & Ohio Railway Company
Atlantic Coast Line Railroad Company
Seaboard Air Line Railway Company
Southern Railway Company
Richmond, Fredericksburg & Potomac Railroad Company
Washington Southern Railway Company
New York, Philadelphia & Norfolk Railroad Company
Virginia & Southwestern Railway Company
Louisville & Nashville Railroad Company

shall put into effect and observe a maximum rate of two cents per mile in the intrastate transportation of passengers in Vir-
11 ginia, said maximum rate to be observed whether the transportation be entirely over the line of one of the said railroad companies or joint transportation over the lines of two or more companies; and on and after the said date it shall be unlawful for the said railroad companies, or any of them, to charge or collect a greater sum than two cents per mile for the transportation of pas-

sengers over the lines controlled and operated by them respectively, except as otherwise allowed in this order or from time to time by the State Corporation Commission.

2. *It is Ordered*, That a maximum rate of two and one-half cents per mile for the intrastate transportation of passengers be fixed and prescribed to go into effect on and after the first day of July, 1907, on the following divisions, or branches, of the Southern Railway Company, which are now excepted from the operation of the maximum rate of two cents per mile hereinabove fixed.

Norfolk Division, extending from Pinners Point to Danville, 204 miles, exclusive of so much of the said division as may be in the State of North Carolina;

Franklin Branch, extending from Franklin Junction to Rocky Mount, 37 miles;

Claremont Branch, extending from James River Junction to Claremont, 50 miles.

From and after the said date it shall be unlawful for the Southern Railway Company to charge or collect a greater sum than two and one-half cents per mile for the intrastate transportation of passengers over these divisions, or branches, unless otherwise directed or allowed by the Commission.

3. *It is Ordered*, That on and after the first day of July, 1907, the following steam railroad companies, viz,

Chesapeake Western Railway
Cumberland Valley & Martinsburg Railroad Company
Danville & Western Railway Company
Indian Creek & Pound River Railroad Company
Marion & Rye Valley Railway Company
Nelson & Albemarle Railway Company
Valley Railroad Company of Virginia
Virginia-Carolina Railway Company
Virginia Southern Railroad Company
Winchester & Potomac Railroad Company
Winchester & Strasburg Railroad Company
Norfolk & Southern Railway Company

shall put into effect and observe a maximum rate of three cents per mile in the intrastate transportation of passengers in Virginia, and on and after the said date it shall be unlawful for the said railroad companies, or any of them, to charge or collect a greater sum than three cents per mile for the transportation of passengers over the lines controlled and operated by them respectively, except as otherwise allowed from time to time by the State Corporation Commission.

4. *It is Ordered*, That on and after the first day of July, 1907, the following steam railroad companies, viz,

Big Sandy & Cumberland Railroad Company
Black Mountain Railway Company
Interstate Railroad Company
Lick Creek & Lake Erie Railroad Company

Mr. Airy & Eastern Railway Company
New River, Holston & Western Railroad Company
Potomac, Fredericksburg & Piedmont Railroad Company
Surry, Sussex & Southampton Railway Company
Tidewater & Western Railroad Company
Virginia Anthracite Coal and Railroad Company
Virginia & Kentucky Railway Company
Wise Terminal Company

shall put into effect and observe a maximum rate of three and one-half cents per mile in the intrastate transportation of passengers in Virginia, and on and after the said date it shall be unlawful for the said railroad companies, or any of them, to charge or collect a greater sum than three and one-half cents per mile for the transportation of passengers over the lines controlled and operated by them respectively, except as otherwise allowed from time to time by the State Corporation Commission.

5. *It is Further Ordered*, That in applying the foregoing maximum passenger rates prescribed for the several railroads in Virginia, the railroad companies may charge and collect a minimum rate of ten cents per passenger for any single haul.

6. The payment of fares subject to the maximum rate herein prescribed shall entitle the passenger to the same transportation of baggage as now allowed by the carriers under and in connection with the present rates, and no steam railroad company operating in Virginia shall change or alter the rules governing the rights of passengers with respect to the transportation of baggage in Virginia, without the consent of the Commission first obtained.

7. Steam Railroad Companies operating in Virginia may charge and collect in addition to regular ticket rates the fixed sum of ten cents from all cash fare passengers who had been afforded reasonable opportunity for purchasing ticket before boarding train; provided that the Conductor shall in all such cases deliver to passengers a receipt for the amount collected redeemable at any ticket office of the Company within thirty days from date of issue.

It is Ordered, That the Clerk of the Commission do forthwith publish this order in full in one of the newspapers of general circulation published in the City of Richmond, once a week for four successive weeks, as required by law."

Under the constitutional system of Virginia, the said order of the Commission cannot take effect until the same is published once a week for four consecutive weeks in some newspaper of general circulation published in the City of Richmond, and, accordingly, the said Commission, in said order, ordered that the Clerk of the Commission do forthwith so publish said order, and unless prohibited by the order of this Honorable Court he will or may at once proceed to complete or continue such publication as to the complainant.

6. This complainant further shows that at the time of its incorporation and organization, as shown in paragraph 1, of this bill, there were in existence in the State of Virginia, entering into and forming a part of the charter of this Complainant, certain public

laws of the State which had theretofore been passed, and which had been enacted into the act commonly known as the Code of Virginia of 1887, namely, Sections 1202, 1240 and 1242 thereof, a true copy of which sections is herewith filed as a part of this bill, marked Exhibit D, and this Complainant shows that the said Sections 1202, 1240 and 1242 of the said Code were inducements for it to accept its charter, to organize into a corporation, to acquire by purchase the property in said State which it now owns, and controls, and operates as above mentioned, and to do business, as above set forth, and the same were accepted by it and entered into and became a part of the contract between it and the State of Virginia.

And by Section 1242, which formed a part of the same chapter as Section 1240, the Legislature of Virginia provided that,

"no law shall reduce the tolls so as to prevent the dividends of fifteen *per centum per annum* within thirty years from the time the first dividend of profits of the said company was declared, or so as to prevent dividends of twelve *per centum per annum* after the said thirty years and before fifty years from the same time, or so as to prevent dividends of ten *per centum per annum* after the said fifty years."

The said aforementioned provisions of the Code of 1887 formed a part of the charter of your orator, and constitute a contract between the said State of Virginia and your orator, that the tolls of your orator shall not be reduced except under the circumstances and conditions prescribed by the said above sections of the Code of Virginia of 1887.

Relying upon its said charter and the said public laws above referred to as a part thereof, this complainant caused itself to be organized, purchased and acquired its said property in the State of Virginia and made, issued and caused to be sold its bonds and stocks to the amount of many millions of dollars; and the purchasers of the same, in making their investments in the said bonds and stocks of this complainant, also, as complainant believes and therefore avers, relied upon said contractual obligations which existed between this complainant and the State of Virginia, and this complainant has in all respects organized, managed and adjusted its affairs and conducted its business in like reliance upon its said contract with the State of Virginia.

While the General Assembly of Virginia, in enacting said public laws above referred to, reserved the right to alter, modify and repeal the charters of any railway company governed thereby, it expressly excepted, from such right of alteration, modification or repeal, the power to change the tolls of this Company without its assent as follows:

"Except that no law shall be passed for taking from a company its works or property without making to it just compensation, or for changing its tolls without its assent in any other cases except such as are specially provided for in this chapter."

and thereby secured to this complainant, as a contractual right with

the State of Virginia, the right to charge, receive and collect the tolls as fixed and established and permitted in said public acts.

This complainant denies that any of the events have happened which satisfy the conditions precedent established by said
16 statute to the exercise of any right on the part of the State of Virginia to change the tolls of this complainant without its assent; and likewise denies that any exceptional case has arisen or exists such as is specially provided for in the chapter last herein referred to. The net profits of this complainant have never amounted to a sum equal to its capital stock with six per centum per annum interest thereon; its net profits have never been such that dividends might be declared out of the same exceeding, or as much as, the rate of fifteen per centum per annum on the capital stock invested; and the net profits of this complainant have never been such that any dividend could have been declared, and inasmuch as this complainant was organized about eleven years ago, it is obvious that no dividend has been or could have been declared, so much as thirty years before the notice issued in this cause.

This complainant is advised and believes that it has not, since the passage of an act of the General Assembly of the State of Virginia, entitled "An Act Concerning Corporations," which became a law on the 21st day of May, in the year 1903, either purchased, merged or consolidated with itself any railroad competitive with it between points both of which are in the State of Virginia, nor has it, since the passage of the last mentioned act, accepted or effected any amendment to, or of, its charter thereunder, and it expressly avers that it has never, at any time nor does it now, assent to any change in its tolls or rates, and it has not in any way waived or lost the right guaranteed to it by the said contract with the State of Virginia in respect to its tolls or rates.

On the contrary, this complainant insists that it is entitled to the benefit of Paragraph One of Section Ten of Article One of the Constitution of the United States, which prohibits a State from passing any law impairing the obligation of a contract, and submits that, inasmuch as the State of Virginia cannot take action having this effect, it is not within the power of the said Commission, organized and existing under the laws of the State of Virginia
17 and exercising in that regard no greater power than the power of the State in the premises, to impair the obligation of the contract hereinbefore set forth by the adoption and promulgation of the proposed rule, regulation, order or requirement, which materially changes the rates and tolls of this complainant as they at present exist and reduces them materially below the amounts permitted by its said contract with the State of Virginia, and this complainant prays that it may have in the premises the full benefit of the provisions of the Constitution of the United States hereinbefore referred to, for the preservation of its contractual rights in respect to its rates and tolls.

7. The effect of the said order of the State Corporation Commission of Virginia, if enforced, would, as will appear from the considerations now about to be set forth, be to deprive the complainant of

its property without just compensation and without due process of law, and to deny to it the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States, the benefit and protection of which the complainant respectfully sets up and claims.

The existing passenger rates and charges in effect upon this complainant's lines in the State of Virginia, and applicable to intrastate business in said State, are not higher than three cents a mile, and are not higher than is just and reasonable, whether considered in respect to the value of the property used by this complainant in the public intrastate service in Virginia, or in respect to the value of the service rendered to the travelers upon its lines. The said rates are less than the said complainant is permitted to charge by its said contract with the State of Virginia.

Complainant further respectfully represents that from time to time, in order to accommodate the public and induce travel upon its railway it causes to be issued various tickets known as mileage books, summer excursion tickets, convention rates and other classes of tickets which are sold under particular conditions and at rates
18 substantially lower than the regular tariff, and that such rates are not higher than are just and reasonable whether considered in respect to the value of the property used in the service rendered and the cost thereof, or in respect to the value to the service rendered to the passenger.

This complainant has already filed as an exhibit and as a part of this bill the answer filed by it before the State Corporation Commission of Virginia, in which it endeavored to show cause why a maximum rate of two cents per mile for the transportation of passengers over its line in Virginia should not be prescribed, and in said answer it set forth particularly the effect upon the business of this complainant at said rate had the same been in effect for the year ending June 30th, 1905, to which exhibit and statement therein reference is now made and the same is prayed to be read as a part hereof.

By this answer it will appear that the effect upon the intrastate passenger revenues of this complainant in Virginia, if the said order had been in effect during that year ending June 30, 1905, would have been to reduce the returns upon capital embarked in that business to the inadequate return of 9/10 of one per cent., a sum utterly insufficient even to discharge the proper portion of the interest upon the mortgage obligations of respondent and would yield no return whatever upon the stock of respondent; and accordingly this complainant in that answer set up and relied upon confiscation as here.

Complainant further avers that since the filing of said answer another operating year of this Company has expired and complainant avers that upon the application of the proposed order for a two cent maximum passenger rate to its business for the year ending June 30th, 1906, the same will appear to be as disastrous to the business and rights of this Company as was shown that such a rate would have been to its business and rights for the year ending June 30th, 1905. This condition is shown by the following statement made up by the

accounting department of this Company and which is believed
19 to be correct of the effect of said order would have been upon the business of this last year.

The gross earnings of this complainant from its intrastate passenger traffic in Virginia for the year ending June 30, 1906, were.....	$1,616,395	19
Deduct from this sum the ordinary operating expenses incident to this service which expenses are not less than 63.9 per cent. of such gross earnings.	1,032,876	53
Leaving earnings from operation.....	$583,518	66

Complainant, however, avers that this sum cannot properly be treated as net earnings resulting from its intrastate passenger business in the State of Virginia, because complainant has, in addition to the operating expenses paid by it as incidental to its passenger service, to pay to the State of Vrginia, its counties and municipalities, large sums of money for taxes and assessments, and also from year to year has to pay large sums of money for extraordinary cost of operation which it sometimes calls betterments, but which are not proper subjects of capitalization and the passenger service in Virginia of this respondent should bear its proper proportion of these two items of cost; and complainant believes and further avers that the proper proportion to be borne by its intrastate passenger service, is that proportion of its taxes and extraordinary operating expenses as the gross earnings of its intrastate passenger service bears to the entire gross earnings in the State of Virginia, resulting from both its interstate and intrastate passenger and freight earnings; and complainant therefore believes and avers that according to the Statements made up by its Accounting Department and which are believed to be correct the gross amount of its entire passenger earnings in the State of Virginia for the year ending June 30th, 1905, was the sum of $2,693,991.98, and that the gross amount of its entire freight earnings for the same year was the sum of $13,610,357.06,
20 making a total earnings of both classes of its business, freight and passenger; and including its interstate and intrastate earnings of the sum of $16,304,349.04, and that the percentage of its gross earnings derived from its intrastate passenger service for said year is 9.91 per cent. of the total earnings of complainant in the State of Virginia.

The amount of earnings hereinbefore set forth are, however, subject to further deductions covering the proper proportion of taxes and betterments as above stated according to such statements made up by the Accounting Department of this complainant, as follows:

Maximum earnings from intrastate passenger business in Virginia, after deducting ordinary operating expenses		$583,518.66
From this sum should be deducted the proper proportion of taxes to be charged to this class of service, which proportion is 9.91 per cent. of the entire taxes paid to the State of Virginia and its counties	$50,737.29	
Deduct also the proper proportion of extraordinary expenses, which is 9.91 per cent. of the entire amount paid for such extraordinary improvements in Virginia	118,984.35	
		169,721.64
Leaving a balance of		$413,797.02

As a result of the foregoing analysis of the intrastate passenger business of this complainant in the State of Virginia for the year ending June 30, 1906, complainant believes and avers that the only net earnings that it received from that source which could be devoted by it for the purpose of paying interest on its bonded indebt-
21 edness and upon its outstanding stock obligations was about the sum of about $413,797.02.

Complainant further avers that the amount of capital of this Company embarked in its business in Virginia of all sorts as shown by allot-ing that proportion of its bonded indebtedness and capital stock applying to and supported by the property in Virginia according to the market value of such securities as of the 30th day of June, 1906, is about $92,954,199.00. Distributing said capital on the basis of the proportion that the gross earnings from intrastate passenger service bears to the entire gross earnings of the State, there is ascertained that this complainant has invested for the purpose of earning said passenger receipts the sum of $9,212,752.00. The net earnings from said passenger service in Virginia amounted under then existing passenger tariffs to a return of only *four and forty nine one hundredths per cent.* upon the capital invested.

Complainant further avers that, since the publishing of the proposed order reducing its passenger fares to two cents a mile, it has caused an investigation to be made as to the result that said order would have had upon its revenue derived from intrastate passenger service in the State of Virginia for the year ending June 30, 1906, and has ascertained therefrom and believes that had such proposed reduction been in effect during that year the gross earnings it would have received from its passenger service in the State of Virginia would have been reduced by about the sum of $339,878.28 and that the net earnings of this respondent from its intrastate passenger service in the State of Virginia, instead of being the sum of $413,797.02, would have been the sum of about $73,918.74, which sum would have represented a return upon the capital invested in the conduct of this class of respondent's business of *eighty one one hundredths of one per cent.*, (81/100 of 1 per cent.) a

sum utterly insufficient even to discharge the proper proportion of the interest upon the mortgage obligations of respondent and would yield no return whatsoever upon the stock of respondent.

The complainant further shows unto the court that even
22 in the event the amount of its capital invested in its business in the State of Virginia is ascertained upon the basis upon which its property is assessed by said state for purpose of taxation including the capitalization of its franchise tax, which franchise tax under Sections 177 and 178 of the Constitution of Virginia, reading as follows:

"SEC. 177. Each such railway or canal corporation, including also any such as is exempt from taxation as to its works, visible property, or profits, shall also pay an annual State franchise tax equal to one per centum upon the gross receipts hereinafter specified in section one hundred and seventy-eight, for the privilege of exercising its franchises in this State, which, with the taxes provided for in section one hundred and seventy-six, shall be in lieu of all other taxes or license charges whatsoever upon the franchises of such corporation, the shares of stock issued by it, and upon its property assessed under section one hundred and seventy-six; provided, that nothing herein contained shall exempt such corporation from the annual fee required by section one hundred and fifty-seven of this Constitution, or from assessments for street and other public local improvements authorized by section one hundred and seventy; and provided, further, that nothing herein contained shall annul or interfere with, or prevent any contract or agreement by ordinance between street railway corporations and municipalities as to compensation for the use of the streets or alleys of such municipalities by such railway corporations."

"SEC. 178. The amount of such franchise tax shall be equal to one percentum of the gross transportation receipts of such corporation for the year ending June the thirtieth of each year, to be ascertained by the State Corporation Commission, in the following manner:

(*a*) When the road or canal of the corporation lies wholly within this State, the tax shall be equal to one percentum of the entire gross transportation receipts of such corporation.

23 (*b*) When the road or canal of the corporation lies partly within and partly without this State, or is operated as a part of a line or system extending beyond this State, the tax shall be equal to one percentum of the gross transportation receipts earned within this State, to be determined as follows: By ascertaining the average gross transportation receipts per mile over its whole extent within and without this State, and multiplying the result by the number of miles operated within this State; provided, that from the sum so ascertained there may be a reasonable deduction because of any excess of value of the terminal facilities or other similar advantages in other States over similar facilities or advantages in this State."

is made to be one percentum upon the gross transportation receipts of this Company, that the imposition of a two cent maximum pas-

senger rate would as this complainant believes and charges, result in such a reduction of its revenues as to amount to the confiscation of its property. This will abundantly appear by the consideration of the following figures made up by the accounting department of this Company and which are believed to be correct.

The physical property of complainant in Virginia was for the year 1905 assessed for taxation at the sum of $24,202,734.00. The franchise tax paid by this Company for the same year was the sum of $161,742.22. Had, however, the proposed two cent maximum passenger rate been in effect the revenue of this Company from its Virginia business would have been at least reduced to such an extent whereby the franchise tax for said year would have been $157,684.70. The capitalization of this franchise tax of $157,684.70 on the basis of the tax rate in Virginia for State Taxation, to-wit: thirty-five cents upon one hundred dollars would represent a capital of $45,052,771.00, to which sum should be added the assessed value of the physical properties in Virginia of $24,202,734.00 and
24 the aggregate of these two capital sums would show the sum of $69,255,505.00 as being the capital of this Company invested in its business in the State of Virginia ascertaining said capital on the basis of taxes paid by this Company during that year.

The complainant, however, further shows that there is in respect to this complainant's property, as in respect to all other classes of property in the State of Virginia, whether owned by individuals or corporations, a difference between the commercial and tax assessment value, the commercial value being in respect to all classes of property greater than the value assessed for purposes of taxation, and while this complainant does not admit but on the contrary expressly denies that the assessed value is as great as the value which should be considered for the purpose of determining its right to make reasonable earnings out of and reasonable returns on the property used by it in doing its intrastate passenger business as a common carrier in Virginia and performing the public service required of it as such complainant is advised that the State of Virginia having made the assessment for the proposed taxation upon the complainant's property in said state cannot deny that its property in that state is worth at least the amount of said assessment, and in fact its property in Virginia is worth more than the amount of said assessment, and it would cost more to reproduce. If, however, the earnings which it can make under the proposed passenger rates and charges are estimated only in reference to said assessed value of the said property made in the State of Virginia for the purpose of taxation, the complainant avers that the proposed rates and charges will not permit it to earn reasonable profits and enjoy reasonable returns even upon that valuation, and such rates and charges will deprive it of the legitimate use of its property.

The assessment upon the physical properties of the complainant in the State of Virginia for the year ending June 30th, 1906, was, $24,202,734 00.

The franchise tax based upon the freight earnings of this
25 Company in Virginia and its passenger earnings had a maximum two cent passenger rate been in effect capitalized on the basis of thirty-five cents on one hundred dollars would show a valuation for said year of $45,052,771 making a total assessed value of $69,255,505.00. Taking the proportion of this valuation which is used for the purpose of producing revenues from Intrastate passenger traffic in Virginia in the ratio in which the gross intrastate passenger earnings in Virginia bear to the total gross traffic revenues in Virginia, namely 9.91 per cent., the value of the property of this complainant used in Virginia for intrastate passenger purposes on the basis of Virginia assessment for purpose of taxation is shown to be $6,863,220.00. Upon this valuation the present net revenue of $413,797.02 from its intrastate passenger business yields a return of about 6.03 per cent. upon the capital devoted to this purpose. Whereas had the proposed maximum two cent passenger rate been in effect the amount of earnings from this class of business would have been reduced by the sum of $339,878.28, and the net earnings of the Company would only have been the sum of $73,918.74, which would have represented a return of *one and eight one-hundredths* per cent. (1 & 8/100 of 1 per cent.) upon its capital.

Complainant avers that in ascertaining the operating expenses incident to the earning of its intrastate passenger earnings for the year ending June 30, 1906, it has assumed that it requires the expenditure of 63.9 cents to earn one dollar of such revenue, which is the percentage it ascertained as the cost of that service for the year ending June 30, 1905, and although the passenger earnings for the year ending June 30, 1906, have been greater and it may be that the excess cost may not be fully equal to such excess earnings, yet the difference in the final result will not, as complainant believes and charges, be sufficient to materially affect the final result in respect to the inadequate return upon the capital invested.

Complainant believes and further avers that the conditions existing during the year 1906 represent in a fair degree the condi-
26 tions that have heretofore existed and will continue to exist in regard to the operation of this Company, except in respect to the cost of doing its business, which cost is increasing greatly from year to year, and although the figures of the current fiscal year are unavailable to be furnished owing to the fact that the fiscal year will not expire until the 30th of June next, yet complainant has sufficient information to inform the court that although its gross earnings have increased a considerable sum over the gross earnings for the corresponding period of the previous year, yet the cost and expenses incident to the conduct of the work of complainant have advanced so rapidly that the net earnings of this Company have been steadily decreasing during the entire current year and from the period from July 1, 1906 to March 31, 1907, this decrease of net earnings upon its entire business has amounted to about $501,920.

Complainant further avers that the effect of imposition of said two cent maximum passenger rate will not only decrease its revenue from

its intrastate passenger business, but will in addition thereto largely decrease its revenue from its interstate passenger business, which decrease, had such rate been in effect for the year 1906, has been ascertained by complainant to be at least the sum of $115,000.00, but complainant avers that this loss has not been taken into account in estimating the losses heretofore recited in this bill, and which losses in fixing the entire sum of the loss that would come to this complainant as the result of the imposition of said two cent rate, must be added to the losses already set forth.

The general commercial conditions in Virginia are prosperous; the transportation service rendered by the complainant in intrastate transportation is large, and, at reasonable rates, the returns therefor to this complainant would be as this complainant is informed and believes much greater.

Your complainant says that no one can predict with any certainty that the gross receipts of your complainant, even at the present rates of fare, will be greater in the future than they have been in the past, or that they will even equal the receipts of the past few years;
27 and that there is no certain basis upon which to found an opinion that the lower rates of fare provided for in said order of the State Corporation Commission would increase travel upon your complainant's lines and to so prophesy is to indulge in pure speculation without any substantial basis of experience upon which to make an estimate.

The lines of railway of this complainant have at all times been operated as economically as practicable, under the existing conditions, and its operating expenses have at all times, under the conditions confronting it, been as reasonably low in amount as they could be made by economical and judicious management, and it has not been possible, under the conditions existing, for the complainant to operate its road for less than it has been operated. In all respects it has confined its operating expenses, its taxes, its interest, and every other expenditure within the lowest and narrowest limit reasonably practicable under existing conditions.

The complainant respectfully shows to this Honorable Court that the result of the enforcement of the said order would be to deprive this complainant of its property without just compensation, to deprive it of the equal protection of the laws, and to take its property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States, and is also in violation of the Commerce Clause of the Constitution of the United States, the benefit and protection of all of which clauses in the Constitution of the United States it expressly sets up and claims.

8. The complainant further believes and avers that its present rates in Virginia are not higher than a reasonable compensation for the service rendered by it to travelers on its lines, and are in no sense excessive or exortionate; that they are not unjustly, unduly, unreasonably or illegally discriminatory as between individuals, nor as between localities, and that they in no way violate any law. The complainant is advised that it has, as an incident of its property, and as a property right, the right to charge for each service which it

renders a reasonable compensation, and that this complainant
28 is protected by the Fourteenth Amendment to the Constitution of the United States in making, receiving and collecting such charge. The effect of the enforcement of the said order would be materially to diminish this complainant's charges, and to reduce them greatly below what would be a reasonable compensation for the respective services rendered to the travelers on its lines. The Complainant is advised that to prevent it from charging a reasonable compensation for the service rendered the traveler would be to deprive it of its property without just compensation, and without due process of law, and would be to deny to it the equal protection of the laws, and this complainant again claims, in this regard, the benefit and protection of the Fourteenth Amendment to the Constitution of the United States, and shows that if the proposed rates and charges are put into effect the result would be, as aforesaid, to deprive it of its property contrary to the said Fourteenth Amendment to the Constitution of the United States.

9. This complainant is further advised that it has, as an incident of its property, and as a property right, the right to increase its charges whenever, under the circumstances then existing, its charges are less than a reasonable compensation for the service which it renders, and that what may be a reasonable charge to-day for a service may become an unreasonably low charge tomorrow, or at any time thereafter, if conditions in respect to the expense of the service, or other conditions, are so changed as to make it so. The complainant is therefore advised that any action by a State which attempts to fix a maximum charge beyond which the complainant can not go, no matter how unreasonably low such maximum may become under changed conditions would be to deprive the complainant of its property right to increase its rate up to what would, under such changed conditions, be a reasonable compensation for the service rendered, and would, therefore, violate the Fourteenth Amendment to the Constitution of the United States. This complainant avers
29 that the said order of the Commission undertakes to fix a maximum beyond which this complainant cannot go, no matter what may be the circumstances, and that therefore, said order is unconstitutional and void, as being in violation of the Fourteenth Amendment to the Constitution of the United States. This complainant further shows that many of its existing rates are lower than is just compensation for the service rendered, and have heretofore yielded and will continue to yield to the complainant, much less than a reasonable return upon the value of its property employed in such service. Since they were fixed, the operating expenses of the complainant have, without its fault, been largely increased, the cost of equipment, of materials and supplies, and of labor, necessary for its operations, having all largely increased, so that the net return to this complainant has become much less than it has heretofore been, and it is not now, and never has been, as much as this complainant is entitled to receive. The said maximum rate fixed by the proposed order of the State Corporation Commission according to the experience and belief of this complainant, are lower than a just compensa-

tion for the service rendered, and are lower than would afford this complainant a reasonable and just return upon the value of its property used in performing the services in return for such rates, and that the effect of said order, because thereof, and also because said order undertakes to impose an immovable maximum, is to deprive this complainant of its property without due process of law, and of the equal protection of the laws, and to take its property without just compensation, contrary to the said Fourteenth Amendment to the Constitution of the United States, the benefit and protection of which is again, in this regard, expressly set up and claimed.

10. This complainant further believes and avers that its existing rates are properly adjusted in their relation between its interstate rates and its State rates in Virginia and other states, and that all its charges are just and reasonable in themselves, and do not
30 and will not give to this complainant more than a just and reasonable return upon the value of its property used in the transportation service which it renders to the public; and that any reduction in its revenues will seriously embarrass and obstruct it in providing, and will deprive it of its power to properly provide, the facilities which the public commerce dependent upon it for transportation absolutely requires for the movement of traffic, both intra and inter state. This complainant is advised that no state has a right to require that its own traffic between points within the state shall be given a preferential service, or shall be carried at preferential and lower rates than other traffic. No state has a right to require such discrimination or partiality in favor of its own traffic. This complainant shows that the effect of the said rates proposed to be put into effect pursuant to the order of the State Corporation Commission hereinbefore referred to, will be to destroy the proper adjustment of its intrastate rates in Virginia to its interstate rates generally, and to require that preference shall be given by this complainant, and an undue discrimination exercised by it, in favor of the intrastate passenger traffic in Virginia over the interstate passenger traffic carried by this complainant, and that to require such preferential and such undue discrimination in regard to the intrastate passenger traffic of the State of Virginia would be to so regulate and burden interstate commerce as to violate the Commerce clause of the Constitution of the United States, the benefit and protection of which this complainant respectfully sets up and claims.

11. It is provided by the constitution of Virginia that any corporation failing or refusing to obey any valid order or requirement of the Commission within such reasonable time, not less than ten days, as shall be fixed in the order, may be fined by the Commission (proceeding by due process of law) such sum not exceeding five hundred dollars as the Commission may deem proper, or such sum, in excess of five hundred dollars, as may be prescribed
31 or authorized by law; and each day's continuance of such failure or refusal, after due service upon such corporation of the order or requirement of the Commission, shall be a separate offense. And it is further provided that the right of no person to

institute and prosecute in the ordinary courts of justice any action, suit or motion against any transportation or transmission company for any claim or cause of action against such company shall be extinguished or impaired by reason of any fine or other penalty which the Commission may impose, or be authorized to impose, upon such company because of its breach of any public duty, or because of its failure to comply with any order or requirement of the Commission; but in no such proceeding by any person against such corporation, nor in any collateral proceeding shall the reasonableness, justness or validity of any rate, charge, classification or traffic, rule, regulation or requirement, theretofore prescribed by the Commission, within the scope of its authority, and then in force be questioned. If, therefore, the said order, herein complained of, of the State Corporation Commission, shall be permitted to go into effect, it will subject this complainant to the danger of a multitude of suits based upon such order, and to prosecutions for penalties to enormous amounts. The complainant further shows that unless it is relieved in this cause, the number of actions aforesaid and the number of actions for penalties to which it will be thus exposed, and which will be thus instituted against it, will be enormous, and it would be seriously and unjustly burdensome and expensive to the complainant to be subjected to the numerous suits and prosecutions for penalties to which it would be subject if relief herein is not granted. And the tendency of such suits, involving in the aggregate such enormous amounts, would be to depreciate the value of complainant's property and the value of its stocks and bonds and would greatly impair its credit and consequently its ability to perform the public service required by the commerce tributary to its lines and would inflict great and irremediable injury and damage, not only upon the complainant and upon the holder of its stocks and bonds but also upon the traveling public.

32 12. The defendants, Beverly T. Crump, Henry C. Stuart, and Joseph E. Willard, constitute the State Corporation Commission of Virginia, the said Beverley T. Crump being its Chairman and the said Henry C. Stuart and Joseph E. Willard being associate members thereof, and the said R. T. Wilson is the clerk of said Commission.

13. The complainant shows to the Court that its purpose in this cause is, by an orderly proceeding in the courts, to obtain a judicial determination of its rights under the Constitution of the United States, and if, as it is advised and believes, its just rights in the premises are imperiled, denied and encroached upon by the order of the State Corporation Commission hereinbefore complained of as contrary to the Constitution of the United States, then to obtain a judicial decree establishing and protecting the rights of this complainant and to that end it is essential, as alleged in this bill, that an injunction shall be issued; but this complainant does not desire in any way injuriously to affect any lawful right of the State or of the people of Virginia, or of any other person, and hereby complainant offers and undertakes to do all in its power to maintain the *status quo* during the course of this judicial inquiry, and accord-

ingly it consents, and it prays the court, that there be and shall be, adopted herein a proceeding analogous to that provided by subsection (e) of Section 156 of the Constitution of Virginia, namely, the execution of a bond by the complainant conditioned to pay into the registry of this court, from time to time, when and as the court may so order, such sum or sums of money as shall be equal to the difference between the aggregate passenger rates charged and received by it, and those fixed by the said order of the commission, and that, as an incident thereto, the complainant shall give to any person purchasing a ticket for travel on its lines in the State of Virginia a transferable coupon or other written evidence, representing the sum to which such person or his transferee will be en-
33 titled upon a final decision upholding the constitutionality of such order, such coupons, or the amount covered by such other written evidence, in that event to be payable out of the cash deposit in the registry of this court; and that this complainant, from time to time, shall report to the court at intervals to be fixed by the order of the court herein, statements showing the amount of such passenger fares by it charged and collected, and that from time to time the complainant shall give such further bond or bonds as the Court may require, to secure the proper payment into court of all amounts which finally it shall be adjudged that it should repay, or reimburse, under the final decision of this court, or upon final review thereof; and that on a final determination herein that this complainant is entitled to the amounts covered by said bond or bonds, the said bonds be released and canceled by the court, and, if any amounts shall have been paid into the registry of the court pursuant thereto, that, upon such determination in favor of the complainant, the sum or sums so paid into the registry shall be repaid to the complainant, without further order of the court herein.

14. The subject matter of this suit now brought before this Honorable Court involves questions arising under the Constitution of the United States and rights asserted by the complainant under said Constitution, and protected thereby, and the amount involved herein, exclusive of interest and costs, exceeds the sum or value of two thousand dollars.

15. The complainant avers that it will be irremediably injured unless an injunction be granted as hereinbefore prayed, and relief be given to it in this suit.

In consideration whereof, and forasmuch as your complainant is remediless in the premises under the rules of the common law, and can have adequate relief only in a court of equity, where matters of this nature are properly cognizable and relievable, and to the end, therefore, that the defendants hereinafter named may answer
34 the several matters and things hereinbefore set forth as fully and particularly as if the same were again here repeated, and they were thereunto specially interrogated, but not under oath, answer under oath being expressly waived, the complainant prays that the said defendants be required so to answer, and that an injunction may be issued out of this court enjoining and prohibiting the defendants, Beverley T. Crump, Henry C. Stuart, and Joseph E. Wil-

lard, constituting the State Corporation Commission of Virginia, and each of them individually, and jointly, as constituting said State Corporation Commission of Virginia, and each and all their successors in office, from publishing, or having published, in any newspaper published in the City of Richmond, Virginia, the said order of the State Corporation Commission, bearing date the 27th day of April, 1907, in respect to passenger rates, and from taking any other step or steps whatsoever under the Constitution or laws of Virginia, to enforce the requirements of the said order, or so as to hinder or prevent the complainant from increasing its passenger charges, to the extent that such increase may be fair, reasonable and just, and enjoining and prohibiting the defendant, R. T. Wilson, Clerk of the State Corporation Commission, and his successors in office, from publishing, or having published, the said order of the Commission in any newspaper published in the City of Richmond, Virginia, and enjoining and prohibiting the owner, proprietor, manager, or agent of any such owner, proprietor or manager of any newspaper in the City of Richmond, Virginia, from publishing or having published under the direction of the Commission, or the clerk thereof, such order of the Commission; and that the requirements of the said order of the Commission, and each and every provision of the said order, be declared to be unreasonable, unfair and unjust to the Complainant, and unconstitutional, null and void.

That in the meantime, and until a decision can be had upon your Complainant's motion for the injunction herein prayed, a restraining order may be granted, restraining the acts sought herein
35 to be enjoined, your complainant hereby averring that there is danger of irreparable injury from delay if action should not be taken until such motion for an injunction can be tried upon its merits.

That a writ of injunction be issued, etc., commanding, etc., enjoining the defendants as above prayed.

That on a final hearing said injunction as herein prayed may be made perpetual; that the said order of the Commission and each and every requirement thereof be declared null and void by a decree of this court, so far as the same relate to any of your Complainant's said lines of railroad in Virginia, or to any of its business, and that your complainant may have such other and further relief as in justice it may be entitled to, and as to equity is meet.

May it please your Honors to grant unto your complainant the temporary restraining order aforesaid, the writ of injunction aforesaid, and the writ of subpœna addressed to said defendants Beverley T. Crump, Henry C. Stuart and Joseph E. Willard, individually, and as constituting the State Corporation Commission of Virginia, and R. T. Wilson, Clerk of the State Corporation Commission, commanding said defendants, under a penalty therein named, to appear in this court, on some certain day, to be thereby fixed, to answer the premises and abide by and peform such decree as may be passed herein, but said answer as above stated not to be made on oath, answer under oath being expressly waived.

This is the first application by your complainant for a restraining order or injunction in this cause.

NORFOLK AND WESTERN RAILWAY COMPANY, COMPLAINANT,
By WM. G. MACDOWELL, *Vice President.*

LUCIAN H. COCKE,
JOS. I. DORAN,
Solicitors for Complainant.

36 UNITED STATES OF AMERICA,
State of Virginia, City of Richmond, To wit:

On this the 14th day of May, 1907, before me personally appeared Joseph W. Coxe, who made solemn oath:

That he is the Comptroller of the Norfolk and Western Railway Company, the complainant in the foregoing bill of complaint, and as such has charge of the accounting department of said Company, and is familiar with the earnings and expenses of the various classes of business of said Company; that he is familiar with the earnings and expenses of its passenger business and that the figures set forth in the foregoing bill are the result of examinations and compilations made under his supervision and direction; that he has read the foregoing bill and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein stated on information and belief and as to these matters he believes them to be true.

JOS. W. COXE.

Sworn and subscribed to me before me in the City of Richmond, Virginia, this Fourteenth day of May, in the year 1907.

My commission as Notary Public expires on the 3rd day of February, 1911.

F. L. CRUTCHFIELD, [SEAL.]
Notary Public.

Tax on seal exempted by law.

37 EXHIBIT A.

Certificate of the Norfolk and Western Railway Company, Dated December 30th, 1906, and Schedules, and Supplemental Certificate of the Norfolk and Western Railway Company, Dated August 18th, 1897.

38 STATE OF VIRGINIA:

Norfolk and Western Railway Company.

Certificate.

Dated December 30th, 1896.

39 Norfolk and Western Railway Company.

Certificate.

STATE OF VIRGINIA, *City of Alexandria, ss:*

Norfolk and Western Railway Company, a corporation organized and existing under and pursuant to the Act of Assembly of the State of Virginia, approved January 15th, 1895, entitled "An act authorizing the purchasers of the railroads and property of the Norfolk and Western Railroad Company, sold by foreclosure of the deed of trust or mortgage thereon, to become and be a corporation, to adopt a name therefor, and to possess and exercise general and other powers," in conformity to the requirements of Section 3 of said Act, a copy of which Act, marked "Schedule A," is hereunto annexed and made part hereof, does hereby certify as follows, viz:

First. Said Norfolk and Western Railway Company, on the 24th day of September, 1896, acquired title to the railroads and branches, rights, privileges, franchises, and property of the Norfolk and Western Railroad Company described in and covered by the deed of trust or mortgage dated the twenty-ninth day of October, 1889, and upon or about that day duly executed, acknowledged and delivered by said Norfolk and Western Railroad Company to The Mercantile
40 Trust Company of New York, under and by means of the following sale and conveyance, viz:

(1.) The sale of said mortgaged property and premises, being the railroads and branches, rights, privileges, franchises, and property in said mortgage described, was held in the city of Norfolk on the fifteenth day of September, 1896, under and pursuant to a certain decree of foreclosure and sale entered on the twenty-sixth day of June, 1896, in a certain consolidated cause in equity pending in the Circuit Court of the United States for the Eastern District of Virginia, wherein The Fidelity Insurance, Trust and Safe Deposit Company and The Mercantile Trust Company and others were complainants, and said Norfolk and Western Railroad Company, a corporation created by and existing under the laws of the State of Vir-

ginia, was defendant, in which suit it was sought to foreclose the said deed of trust or mortgage, and it was also proposed to sell the said mortgaged property and premises, being the railroad and branches, rights, privileges, franchises and property of said railroad company in said mortgage described. At such sale the said railroads and branches, rights, privileges, franchises, and property were bid in by and struck off to George Coppell, J. Kennedy Tod, Victor Morawetz, and William E. Glyn, who became the purchasers thereof for the purpose of organizing, as hereinafter set forth, the Norfolk and Western Railway Company as a new corporation or body politic and corporate pursuant to the said Act of Assembly.

41 (2.) Such sale having been duly confirmed by a decree entered in said cause by said Circuit Court of the United States for the Eastern District of Virginia, on the twenty-fourth day of September, 1896, said railroads and branches, rights, privileges, franchises, and property were conveyed by deed dated the twenty-fourth day of September, 1896, to the said George Coppell, J. Kennedy Tod, Victor Morawetz and William E. Glyn for the use, benefit and behoof of the corporation or body politic and corporate by them constituted under said Act of Assembly, the same being the undersigned Norfolk and Western Railway Company, such deed having been executed by G. E. Bowden and Charles Sharp, as Special Masters of the first part; Henry Fink, as Receiver, of the second part; The Mercantile Trust Company, as trustee, of the third part; said Norfolk and Western Railroad Company, of the fourth part, and said George Coppell, J. Kennedy Tod, Victor Morawetz, and William E. Glyn, of the fifth part, and having been duly admitted for record on said twenty-fourth day of September, 1896, in the office of the clerk of the County Court of Norfolk County, State of Virginia, and recorded in Deed Book 201, Pages 452, etc., a copy of which deed of conveyance, marked "Schedule B," is hereto annexed and made part hereof.

Second. The said George Coppell, J. Kennedy Tod, Victor Morawetz, and William E. Glyn, being the purchasers at said sale, adopted a plan of organization dated September 24th, 1896, a certified copy of which plan, marked "Schedule C," is hereto annexed and made part of this certificate.

42 Third. The amount and classes or kinds of capital stock and mortgage bonds and other obligations authorized to be issued by said Norfolk and Western Railway Company are as specified in said plan of organization, a copy whereof is hereto attached, that is to say:—

Two hundred and thirty thousand shares of common stock and six hundred and sixty thousand shares of adjustment preferred stock, each share of such common stock and adjustment preferred stock being of the par value of $100 each and the aggregate par value of such shares being $89,000,000. The preferences, conditions and voting power of such common stock and adjustment preferred stock are as set forth in said plan of organization.

Sixty-two million five hundred thousand dollars of first consolidated mortgage four per cent. gold bonds, of which amount $23,-

322,675, par value have been issued, or are to be issued forthwith to the said purchasers or upon their order, and the remainder are to be reserved to be issued and used as set forth in a mortgage or deed of trust to be executed by said Norfolk and Western Railway Company to secure said bonds, as more particularly set forth in such plan of organization.

Said Norfolk and Western Railway Company is also authorized to issue, as provided in said plan of organization, not to exceed $3,500,000 of fifty-year four per cent. prior lien gold bonds, or not to exceed £700,000 sterling of fifty-year four per cent. prior lien sterling bonds.

43 Fourth. The name of the new corporation formed by said purchasers, as aforesaid is "Norfolk and Western Railway Company," and the name of its president is Henry Fink.

Fifth. The number of directors of said new corporation at the time of its organization was seven, and their names were: Henry Fink, George Coppell, J. Kennedy Tod, Victor Morawetz, William E. Glyn, Joseph I. Doran, and A. Snowden Marshall. The number of directors of said new corporation has since been increased to eleven by the election of four additional directors, and the number of directors of said new corporation now is eleven, and their names are:

Henry Fink, New York, N. Y.
F. J. Kimball, Philadelphia, Pa.
William B. Boulton, New York, N. Y.
William B. Campbell, Philadelphia, Pa.
George Coppell, New York, N. Y.
Joseph I. Doran, Philadelphia, Pa.
William E. Glyn, New York, N. Y.
Victor Morawetz, New York, N. Y.
Walter H. Taylor, Norfolk, Va.
J. Kennedy Tod, New York, N. Y.
Henry Whelen, Jr., Philadelphia, Pa.

44 In Witness Whereof, said Norfolk and Western Railway Company has executed this certificate under and by its common or corporate seal, attested by the signature of its president, this 30th day of December, 1896.

[Norfolk & Western Railway Company, Virginia. Organized 1896.]

NORFOLK AND WESTERN RAILWAY COMPANY,
By HENRY FINK, *President.*

Attest:
A. J. HEMPHILL, *Secretary.*

45 "SCHEDULE A."

COMMONWEALTH OF VIRGINIA:

I, Charles T. O'Ferrall, Governor of the Commonwealth of Virginia, certify that J. Bell Bigger, whose name is signed to the within

copy of Act of Assembly, approved January 15th, 1896, in relation to Norfolk and Western R. R. Co., bearing date the 22nd day of September, 1896, is, and was at the time of signing, Clerk of the House of Delegates and Keeper of the Rolls of Virginia, duly elected and qualified; that he is authorized by the laws of this State to make and sign such copy of Act, and that to all his official acts full faith, credit, and authority are due and ought to be given.

In Testimony Whereof, I have hereunto set my hand as Governor, and caused the Great Seal of the Commonwealth to be affixed. Done at the city of Richmond, this 22nd day of September, in the year of our Lord one thousand eight hundred and ninety-six, and in the 121st year of the Commonwealth.

[Great Seal of the Commonwealth of Virginia.]

CHAS. T. O'FERRALL.

By the Governor:
J. T. LAWLESS,
Secretary of the Commonwealth and
Keeper of the Seals.

46 "SCHEDULE A."

AN ACT

Authorizing the Purchasers of the Railroads and Property of the Norfolk and Western Railroad Company Sold by Foreclosure of a Deed of Trust or Mortgage Thereon, to Become and be a Corporation, to Adopt a Name Therefor, and to Possess and Exercise General and other Powers.

[Approved January 15th, 1896.]

Whereas, A certain consolidated cause in equity is now pending in the Circuit Court of the United States for the Eastern District of Virginia, wherein The Fidelity Insurance, Trust and Safe Deposit Company and The Mercantile Trust Company, and others, are complainants, and the Norfolk and Western Railroad Company, a corporation created by and existing under the laws of the State of Virginia, is defendant, in which suit it is sought to foreclose a deed of trust or mortgage dated the twenty-ninth day of October, eighteen hundred and eighty-nine, and upon or about that day duly executed, acknowledged and delivered by said railroad company to The Mercantile Trust Company of New York, in which suit also it is proposed to sell the mortgaged property and premises, being the railroads and branches, rights, privileges, franchises, and property of said railroad company in said mortgage described.

Now therefore,

1. *Be it enacted by the General Assembly of Virginia*, That the purchaser or purchasers of the said mortgaged premises of the
47 said Norfolk and Western Railroad Company under a decree for the sale thereof in the course of the said suit in

equity, and such person or persons as he or they may associate with himself or themselves, shall forthwith be constituted a body politic and corporate by the name which they may select as set forth in the deed of conveyance of said mortgaged premises, or in any writing signed by such purchaser or purchasers and recorded in the court in which the said deed of conveyance shall be first admitted for record; and such new corporation shall have, possess, and be invested with all the estate, right, title, and interest in and to such railroads and other property, with their appurtenances, and all the franchises, powers, rights, and privileges had and possessed by said Norfolk and Western Railroad Company to the same extent as a purchaser under sections twelve hundred and thirty-three and twelve hundred and thirty-four of the Code of Virginia, and shall perform all the duties prescribed by said sections of said Code; and in the organization of the new corporation, as well as for any of its purposes after organization, such new corporation may exercise any or all of the franchises, powers, rights, and privileges had and possessed by the Norfolk and Western Railroad Company; *Provided, however,* That the said new corporation shall not be limited as to the amount or classification of its stocks or bonds, except that the total amount of stock issued at the time of its organization shall not exceed one hundred million dollars and shall have no immunity from any lawful State, county, or municipal taxation by reason of its former charter or any law heretofore exempting it from taxation.

2. Such purchaser or purchasers may associate with him or them any number of persons in the organization of the new corporation, which may create and issue its stock and its bonds, secured by deed of trust or mortgage or otherwise, according to any plan adopted by such purchaser or purchasers, and filed as hereinafter pro-
48 vided, or in the exercise of any of the franchises, powers, rights, privileges hereby vested or granted.

3. It shall be the duty of such new corporation, within six months after the conveyance to it of said mortgaged premises, to execute a certificate in writing under its common seal attested by the signature of its president or vice-president, referring to the sale and conveyance by which it shall have acquired title to such premises and the plan of organization adopted by the purchasers, the amount and classes or kinds of capital stock and mortgage bonds or other obligations authorized to be issued, and also specifying the name of such new corporation and of its president and the number and names of its directors, which certificate shall be filed in the office of the Secretary of the Commonwealth of Virginia, and a certified copy thereof shall be conclusive evidence of the existence of such new corporation.

4. In addition to its other powers, such new corporation shall have and from time to time may exercise the following powers, or any of them, namely:—

(*a.*) The new corporation may issue its capital stock of one or more classes or kinds, and in one or more series or grades, with such preferences, conditions, and voting power as shall be provided in said plan of organization, and from time to time it may increase or decrease the amount of any class or kind or grade of such stock as

shall be provided in said plan of organization, or with the approval of a majority in amount of the stockholders, given at a meeting of stockholders called for that purpose, unless and except as otherwise expressly provided in certificates representing stock previously issued. The shares of each class of stock shall be of such par amount, and shall entitle the holders to such vote, respectively, as shall be determined in the said plan of organization, or by the stockholders in like manner.

49 (*b.*) The new corporation may borrow money and issue bonds or other evidences of indebtedness, and may secure the same from time to time, by mortgage or deeds of trusts upon any or all of its property and franchises, and such new corporation, from time to time, may issue and sell its bonds and its capital stock at such prices and on such terms as shall be specified in said plan of organization, or as a majority in amount of the stockholders shall approve at any meeting, and may receive in payment therefor property, securities, or shares in any other corporation or corporations which under this Act the new corporation is authorized to acquire or hold, and any stock so issued shall be deemed fully paid and free from any liability.

(*c.*) The new corporation may, by purchase, by consolidation, or merger of capital stock, property, and franchises, by lease or otherwise as shall be specified in said plan of organization, or on such terms as a majority in amount of the stockholders shall approve at any meeting, from time to time acquire the ownership or control of and operate any or all of the lines of railroad owned, leased, or operated by the Norfolk and Western Railroad Company, whether located in this or any other State or States, and any branches or extensions thereof, and also any or all of the rolling stock owned or used by the Norfolk and Western Railroad Company, and any terminals, wharves, warehouses, hotels, machine works, and other similar properties and plants of any corporation or corporations managed or controlled by the Norfolk and Western Railroad Company, and it may so acquire the stock and bonds, property and franchises of the corporation or corporations owning or from which are derived any such railroads, properties and plants; power being hereby granted to such corporation or corporations with the approval of a majority in amount of its or their shareholders respectively, to make and carry out such sales, consolidations, mergers, leases, or other methods of acquisition.

50 5. The business, property and concerns of the new corporation shall be managed by a board of directors, consisting of not less than five members, and one of their number shall be chosen by the board as president. The stockholders may adopt by-laws for the government of the stock, property, and concerns of the corporation, and for the regulation of its directors, officers, and agents, and in and by such by-laws the stockholders may prescribe how such by-laws may be amended or repealed: *Provided, however,* That until such by-laws shall be adopted by the stockholders the corporation shall be governed by by-laws adopted in accordance with the plan of organization.

6. The principal office of the company shall be in the city of Roanoke, in this State, at which all meetings of the stockholders shall be held; and all other offices, machine works, and workshops of said company shall be located in the State of Virginia, so far as the same may be found practicable.

7. It shall be lawful for the Circuit Court of the city of Roanoke, upon the petition of the president and board of directors, at any time to order a change in the name of the company; but any such change of name shall be without prejudice to the rights of any creditor or to the exercise of any of the franchises, powers, rights, and privileges vested or granted by this Act.

8. There shall be paid to the clerk of the county or corporation in which any deed of trust or mortgage authorized by this Act may be first presented for recordation the rate of taxation prescribed by law for the recordation of deeds of trust or mortgages upon the works and property of railroad companies lying partly in this State and partly in another State. Whenever any deed of trust or mortgage of the new corporation, or any deed of conveyance to the purchaser or purchasers or to the new corporation, shall have been admitted or presented for recordation in one or more counties or corpora-
51 tions of this State an exemplification thereof, duly certified by the clerk of the county or corporation to be a true copy of the said deed of trust or mortgage or deed of conveyance as the same has been admitted or presented for record in his office, may, upon payment of clerical fees, be admitted for record and be recorded in any one or more counties or corporations of this State; and such record and admission for record shall be as valid and effectual for all purposes of vesting title, or evidence, and of notice as the record of the original deed or instrument is now by law held and declared to be, and a notation of the record and admission for record of any exemplified copy may be noted by the clerk on the original deed or instrument, as well as upon the exemplified copy.

9. All taxes and debts due or to become due the State of Virginia by the corporation shall be paid in lawful money of the United States and not in coupons.

10. This Act shall be in force from its passage.

A copy:—

J. BELL BIGGER,
Clerk of the House of Delegates and
Keeper of the Rolls of Virginia.

September 22d, 1896.

The fee on this Act has been paid into the Treasury of the State of Virginia.

J. BELL BIGGER,
C. H. D. & K. of R. of Va.

September 22d, 1896.

52 SCHEDULE B.

Deed of Main Line of Norfolk & Western Railroad Company to Norfolk and Western Railway Company.

The New Corporation or Body Politic Corporate Constituted by George Coppell, J. Kennedy Tod, Victor Morawetz, and William E. Glyn, Purchasers.

One-Hundred-Year Mortgage Foreclosure.

Dated September 24, 1896.

53 "SCHEDULE B."

An Indenture, made this twenty-fourth day of September, in the year one thousand eight hundred and ninety-six, between

G. E. Bowden and Charles Sharp, as Special Masters, appointed by the United States Circuit Courts for the Eastern District of Virginia, the Western District of Virginia, the District of West Virginia, the Southern District of Ohio, Western Division, and the Eastern District of Pennsylvania, in the causes hereinafter mentioned, parties of the first part;

Henry Fink, as Receiver of the property of the Norfolk and Western Railroad Company, appointed by said courts in the causes hereinafter mentioned, party of the second part;

The Mercantile Trust Company, as Trustee under the One-Hundred-Year Mortgage hereinafter mentioned, party of the third part;

Norfolk and Western Railroad Company, a corporation of the States of Virginia and West Virginia, and defendant in the causes hereinafter mentioned, party of the fourth part;

George Coppell, J. Kennedy Tod, Victor Morawetz and William E. Glyn, all of the City of New York, parties of the fifth part, and

Norfolk and Western Railway Company (the new corporation or body politic and corporate constituted by the said parties of the fifth part, as hereinafter set forth, under and pursuant to the laws of the State of Virginia), party of the sixth part.

54 Whereas, the Norfolk and Western Railroad Company, a corporation created and existing under the laws of the States of Virginia and West Virginia, on or about the twenty-ninth day of October, A. D. 1889, executed its certain mortgage or deed of trust (herein called One-Hundred-Year Mortgage), dated on that day, whereby it conveyed to The Mercantile Trust Company, a corporation of the State of New York, as Trustee, the railroads and branches, rights, privileges, franchises and property in said mortgage described, to secure a certain issue of bonds of said Norfolk and Western Railroad Company (herein called its One-Hundred-Year Mortgage bonds), of which there were issued and outstanding on the twenty-sixth day of June, 1896, bonds to the aggregate amount of $16,190,000 of principal, besides the interest thereon; and

Whereas, said Norfolk and Western Railroad Company, having made default in the payment of the interest which became due on said One-Hundred-Year Mortgage bonds, and the principal of the said bonds having been declared due in accordance with the provisions of said bonds and of said mortgage, such proceedings were had in a certain consolidated cause pending in the Circuit Court of the United States for the Eastern District of Virginia, entitled the Fidelity Insurance, Trust and Safe Deposit Company and The Mercantile Trust Company, complainants, against Norfolk and Western Railroad Company, defendant, that a certain decree of foreclosure and sale was, on the twenty-sixth day of June, 1896, entered in said Court, wherein and whereby it was adjudged and decreed that said Norfolk and Western Railroad Company pay or cause to be paid within ten days after the date of said decree certain amounts therein found to be due under said One-Hundred-Year Mortgage, and that in default of such payment by said defendant Norfolk and Western Railroad Company, or by any one claiming under it, or by any one for its account, said mortgaged premises, property and fran-
55 chises should be sold as provided in said decree; and

Whereas, neither said Norfolk and Western Railroad Company, nor any one claiming under it, nor any one for its account, made payment of the said sum or any part thereof within ten days after the entry of said decree, or at any other time; and

Whereas, similar and ancillary causes were pending between the same parties in the Circuit Courts of the United States in and for other judicial districts of the United States, in which portions of the mortgaged premises, property and franchises were situated, namely, the Western District of Virginia, the District of West Virginia, the Southern District of Ohio, Western Division, and the Eastern District of Pennsylvania, and similar and ancillary decrees were entered in each of said causes pending in the said several districts, and the said decree of said Circuit Court of the United States for the Eastern District of Virginia was in all things ratified, confirmed and adopted in and by said several ancillary decrees—to which proceedings and the record thereof in each and every of said courts, including the Circuit Court of the United States for the Eastern District of Virginia, reference is hereby made; and

Whereas, in said cause pending in the Circuit Court of the United States for the Eastern District of Virginia, and in said ancillary causes in said other districts, Receivers of all the railroads, franchises and property of said Norfolk and Western Railroad Company were appointed, and said Receivers entered into the possession of said premises, and are now in possession thereof; and

Whereas, the parties of the first part hereto were, in and by said decree of the Circuit Court of the United States for the Eastern District of Virginia, and in and by said ancillary decrees of the United States Circuit Courts in and for each of said other districts in said causes therein pending, appointed Special Masters to make,
56 direct and conduct the sale of said mortgaged railroads and branches, rights, privileges, franchises and property, and to execute and deliver a deed or deeds of conveyance thereof to the

purchasers thereof upon the entry of decrees confirming such sale thereof, and upon payment or settlement of the purchase price bid, as in said decrees in said several causes provided; and

Whereas, the parties of the first part hereto, in pursuance of said decrees, on the fifteenth day of September, 1896, at the place in said decrees specified, to-wit, at Norfolk, Virginia, at the passenger station upon said railroad of the Norfolk and Western Railroad Company, did duly sell at public auction to the said George Coppell, J. Kennedy Tod, Victor Morawetz and William E. Glyn, parties of the fifth part hereto, the highest and best bidders at said sale, all and singular the said railroads and branches, rights, privileges, franchises and property, the same being the premises, property and franchises in said decrees mentioned and directed to be sold, at and for the sum of $3,000,000, due notice of the time and place of such sale having been given pursuant to said decrees and according to law, and the said decrees having been complied with in all things relating to the said sale; and

Whereas, afterwards the said parties of the first part, Special Masters as aforesaid, did duly make and file their report of said sale to the said several courts, which said report and the sale therein reported, upon due notice to all parties, were, by decrees of the said several courts, duly confirmed; and

Whereas, in and by said last-mentioned decrees confirming said sale the parties of the first part, as such Special Masters, were ordered and directed to sign, seal, execute and deliver a deed or deeds of conveyance to said George Coppell, J. Kennedy Tod, Victor Morawetz and William E. Glyn, parties of the fifth part hereto, the pur-
57 chasers as aforesaid, conveying to them all and singular the railroads and branches, rights, privileges, franchises and property hereinafter described, subject, however, to certain mortgages and liens hereinafter mentioned, and to the terms and conditions hereinafter set forth, upon payment by said purchasers to said Special Masters of the sum of $5,000 in cash, and upon delivery by said purchasers to be canceled or credited, as provided in said decrees, on account of their said bid, of the One-Hundred-Year Mortgage bonds of said Norfolk and Western Railroad Company to the amount of $15,193,200 in addition to $750,000 of said bonds deposited by said purchasers at the time of the acceptance of their bid; and

Whereas, said purchasers, parties of the fifth part hereto, have in all respects complied with the provisions of said decrees confirming said sale, and have paid said sum in cash, and delivered the said One-Hundred-Year Mortgage bonds to the amount aforesaid; and

Whereas, prior to the confirmation of said sale the said purchasers duly notified the said Courts that, upon the execution and delivery of these presents, they and their associates, under and in pursuance of the laws of the State of Virginia, and in particular the Act of Assembly of said State, approved January 15th, 1896, entitled "An Act authorizing the purchasers of the railroads and property of the Norfolk and Western Railroad Company, sold by foreclosure of a deed of trust or mortgage thereon, to become and be a corporation, to adopt a name therefor, and to possess and exercise general and other pow-

ers," would forthwith constitute and become a new corporation, or body politic and corporate, by the name of "Norfolk and Western Railway Company," they having selected said name as the name of such new corporation or body politic and corporate, and

Whereas, said purchasers have petitioned said Court that
58 the name so selected by them as the name of said new corporation or body politic and corporate may be set forth in this deed of conveyance of said mortgaged premises, property and franchises; and

Whereas, it is the true intent and meaning of these presents that upon the execution of this conveyance the said Norfolk and Western Railway Company, the new corporation or body politic and corporate so constituted, and its successors and assigns shall have, possess and be invested with all the estate, right and title in and to the said railroads and branches, rights, privileges, franchises and property of said Norfolk and Western Railroad Company, as provided in the said Act of Assembly of the State of Virginia, approved January 15th, 1896; and

Whereas, the form of this deed was submitted to said courts and filed with the respective Clerks thereof, and approved in and by said decrees confirming said sale;

Now, therefore, this indenture witnesseth: That the said G. E. Bowden and Charles Sharp, Special Masters, as aforesaid, parties of the first part to these presents, in order to carry into effect the said sale made by them, as aforesaid, to the parties of the fifth part, and in pursuance of the aforesaid decrees and in conformity to law, and in consideration of the premises, and of the sums so aforesaid by the said parties of the fifth part paid, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, released, conveyed and confirmed, and by these presents do grant, bargain, sell, assign, release, convey and confirm unto the said purchasers George Coppell, J. Kennedy Tod, Victor Morawetz and William E. Glyn, as joint tenants, and not as tenants in common, for the use, benefit and behoof of the new corporation or body politic and corporate constituted by the said purchasers by the name of Norfolk and Western

Railway Company, under and in accordance with the said
59 Act of Assembly of the State of Virginia—which new corporation or body politic and corporate by force of said Act of Assembly is hereby invested with all the estate, right, title and interest in and to said railroads and branches, rights, privileges, franchises and property hereby conveyed—and to the successors and assigns of said new corporation or body politic and corporate, in fee simple forever, all and singular the railroads and branches, rights, privileges, franchises and property in and by said decrees directed or authorized to be sold, the same being described as follows, viz:

1. The main line of the Norfolk and Western Railroad Company, extending from Norfolk in the State of Virginia, to the State line at Bristol-Goodson (now Bristol), a distance of about 408 miles, and the City Point Branch, extending from Petersburg to City Point, and the Saltville Branch, formerly the works, property and franchises of the Atlantic, Mississippi and Ohio Railroad Company, together

with various other short branches and spurs from said main line, including the Norfolk Branch, the Money Point Branch, the Gilmerton Branch, the Lynchburg Belt Line, the Durham Division Connection, Roanoke Belt Line, Kingston Branch and Radford Branches, the aggregate mileage of said main line and branches being about 441.26 miles.

II. The New River Division of the Norfolk and Western Railroad Company, extending from Radford, Virginia, to Kyle, West Virginia, with branches to coal mines comprising the Flat Top Extension thereof, and including the following branches and spurs: The New River Connection Branch, the Pocahontas Branch, the Bluestone Extension Branch, the Simmons Creek Branch, the Flipping Creek Branch, the Mill Creek Branch and the Elkhorn Branches, in all about 102.89 miles; also the Cripple Creek Extension of the New River Division, commencing at the North Carolina junction
60 at or near Pulaski and extending to a point at or near Speedwell Furnace, in Wythe County (completed only to Ivanhoe), with the Reed Island Branch, the Periwinkle Branch, the Oglesby Branch, the spurs to Betty Baker Mines, the Hematite Branch, the Indian Camp Branch and the Speedwell Extension; the aggregate mileage completed of said New River Division, with its extensions and branches, being about 152.93 miles.

III. The Norfolk Terminal Division of the Norfolk and Western Railroad Company, consisting of a line of railroad formerly of the Norfolk Terminal Company, extending from a point of connection with the main line of the Norfolk and Western Railroad Company, in the City of Norfolk, Virginia, to the coal pier at Lambert's Point, in the County of Norfolk, a distance of 5.3 miles with the Knitting Mill Branch of about one mile, together with the coal pier and land connected therewith at Lambert's Point and the warehouses and grain elevator, formerly the property of the Norfolk Terminal Company, and together with a tract of land, with all the water rights of every description appurtenant thereto, lying north of the railroad and of the coal pier, containing 117.1 acres, more or less, and also a tract of land, with all the water rights of every description appurtenant thereto, lying south of the railroad and of the coal pier, containing 298.3 acres, more or less; the said two tracts aggregating 415.4 acres, more or less, and being more particularly described in the deed of trust or mortgage of the Norfolk Terminal Company to The Fidelity Insurance, Trust and Safe Deposit Company, of Philadelphia, Trustee, dated November 30th, 1888, and recorded in Norfolk County Court, December 15th, 1888, in Deed Book 147, Page 83, and in the Corporation Court of the City of Norfolk, January 14th, 1889, in Deed Book 85, Page 426; and also, all other lands acquired by the Norfolk and Western Railroad Company under the consolida-
61 tion and merger, of the Norfolk Terminal Company with and into the Norfolk and Western Railroad Company.

IV. The Clinch Valley Division of the Norfolk and Western Railroad Company as the same was constructed or in course of construction on October 29th, 1889, or as the same was thereafter constructed, the same being the line of railroad extending from a

point at or near Graham, in Tazewell County, State of Virginia, on the New River Division of said railroad company, and extending thence to a point of connection at or near Norton, in Wise County, in the State of Virginia, with the Louisville and Nashville Railroad, together with various branches, including the Big Creek Branch, Coal Creek Branch, Russell Creek Branch, Russell Fork Branch, Little Tom Branch, Big Tom Branch and spurs, aggregating about 116.18 miles.

V. The Ohio Extension of the Norfolk and Western Railroad Company, the same being the line of railroad commencing at a point in McDowell County, West Virginia, at or near the present end of the track of the Elkhorn extension of the Norfolk and Western Railroad at or near Kyle, and running thence to a point at or near the confluence of Burke Creek and Elkhorn Fork of the Big Sandy River in McDowell County, and running thence through McDowell County, West Virginia, Pike County, Kentucky, and Logan (now Mingo) and Wayne Counties, West Virginia, to a point on the Ohio River in Wayne County, West Virginia, between Twelve Pole Creek and the Big Sandy River; thence crossing the Ohio River and running thence in the State of Ohio to a point at or near Coal Grove (formerly known as Petersburg) in Lawrence County, Ohio, being a distance of about 190.66 miles, together with branches, including the North Fork of Elkhorn Branch and Spurs, Dans Branch, Wells Branch, Dingess Branch and Kenova Belt Line, making an aggregate mileage of about 207.07 miles, as the same was constructed or in course of construction on October 29th,
62 1889, or as the same was thereafter constructed, together with all leasehold and other right, title, interest and estate, franchises and rights which the said Norfolk and Western Railroad Company acquired from the West Virginia and Ironton Railroad Company, which company was after said last-mentioned date consolidated and merged with and into said Norfolk and Western Railroad Company.

VI. The North Carolina Extension of the Norfolk and Western Railroad Company, as the same was constructed or partly constructed on October 29th, 1889, or as the same was thereafter constructed, extending from a point on the Cripple Creek Extension of the New River Division of the Norfolk and Western Railroad Company, near Ivanhoe, in the County of Wythe, in the State of Virginia; running thence through Wythe, Carroll and Grayson Counties, in Virginia to a point on the State line of Virginia and North Carolina, completed, however, only to a point at or near Gossan, together with branches aggregating about 18.03 miles.

VII. All short lines or branches or extensions tributary to the main line, New River Division, Clinch Valley Division, Norfolk Terminal Division, Ohio Extension, North Carolina Extension, and other parts of the line or system of the said Norfolk and Western Railroad Company acquired by construction or otherwise, with any of the bonds of the Norfolk and Western Railroad Company issued under its mortgage or deed of trust, known as the One-Hundred-Year Mortgage, dated October 29th, 1889, or their proceeds.

VIII. Also, all railroads, railways, ways, rights of way, roadbed

and grade, and all station, depot and shop grounds, yards and other grounds used and to be used in the operation of the said lines of railroad, and all rails, tracks, sidings, switches, bridges, fences, turntables, water tanks, viaducts, culverts, main passenger and
63 other depots, station houses, freight houses, machine shops, docks and all other structures, buildings and fixtures whatsoever acquired for the use and operation thereof; and together with all the rolling stock, machines, tools, implements, fuel and materials of the said Norfolk and Western Railroad Company, owned or acquired for constructing, maintaining, operating, replacing, improving or repairing the said lines of railroad and their appurtenances or any part thereof; and all the real and personal estate owned on October 29th, 1889, or thereafter acquired and used or the operation thereof, including

All the right, title and interest of the Norfolk and Western Railroad Company in and to 188 locomotives, 71 passenger car equipment, 8,013 freight car equipment, the rolling stock included in and covered by the deed of trust or mortgage of said Railroad Company dated June 1st, 1888, to the Girard Life Insurance, Annuity and Trust Company of Philadelphia, Trustee; and in the contracts, leases, etc., therein referred to, said mortgage securing an issue of bonds of said Railroad Company, of which there were outstanding and unpaid on February 6th, 1895, $4,114,000.

All the right, title and interest of said Railroad Company in and to 25 locomotives, 6 passenger car equipment, 1,421 freight car equipment, the rolling stock included in and covered by the deed of trust or mortgage of said Railroad Company dated December 30th, 1891, to the Girard Life Insurance, Annuity and Trust Company of Philadelphia, Trustee; and an agreement supplementary thereto, dated September 28th, 1892, to secure an issue of bonds of said Railroad Company, of which there were outstanding and unpaid on February 6th, 1895, $697,000.

All the right, title and interest of said Railroad Company in and to five locomotives, the rolling stock described in and included in a certain contract of lease dated May 4th, 1892, between Burnham, Williams & Company and said Railroad Company.

64 All the right, title and interest of said Railroad Company in and to 10 locomotives, the rolling stock described in and included in a certain contract of lease dated September 22d, 1892, between Burnham, Williams & Company and said Railroad Company.

All the right, title and interest of said Railroad Company in and to 21 locomotives, the rolling stock described in and included in a certain contract of lease dated June 6th, 1893, between Burnham, Williams & Company and said Railroad Company.

All the right, title and interest of said Railroad Company in and to 50 passenger car equipment and 1,400 freight car equipment, the rolling stock described in and included in a certain contract of sale dated January 22d, 1892, between Pullman's Palace Car Company and said Railroad Company.

All the right, title and interest of said Railroad Company in and to 2,000 freight car equipment, the rolling stock described in and

included in a certain contract of sale dated December 22d, 1892, between Pullman's Palace Car Company and said Railroad Company.

All the right, title and interest of said Railroad Company in and to 51 locomotives, 20 passenger car equipment and 818 freight car equipment, the rolling stock described in and included in a certain indenture of lease dated January 3d, 1893, between The Fidelity Insurance, Trust and Safe Deposit Company, Trustee, and said Railroad Company.

All the right, title and interest of said Railroad Company in and to 74 freight car equipment, the rolling stock described in and included in a certain contract of lease dated January 25th, 1894, between the Railroad Equipment Company and said Railroad Company.

All the right, title and interest of said Railroad Company in and to 500 box cars, the rolling stock described in and included
65 in a certain contract dated October 31st, 1894, between the Central Car Trust Company and said Railroad Company.

Also all estate, right, title and interest of the said Railroad Company in and to any and all locomotives, cars and other rolling stock and railroad equipment held subject to any other equipment leases, car-trust contracts or contracts of conditional sale, and all the interest and claim of said Railroad Company under the above-mentioned or any other equipment leases, car-trust contracts and contracts of conditional sale and under said deeds of trust or mortgages.

And also all rolling stock and railroad equipment acquired by The Mercantile Trust Company with the proceeds of the thirty thousand shares of preferred capital stock, under the fifth article of the said One-Hundred-Year Mortgage or deed of trust of the defendant Norfolk and Western Railroad Company, dated October 29th, 1889.

Together with all the corporate rights, privileges and franchises of the said Norfolk and Western Railroad Company possessed on October 29th, 1889, or thereafter acquired, relating to the said railroads, and the construction, maintenance, use and enjoyment of the said lines of railroad or other property.

And all the streets, ways, passages, waters, water-courses, easements, rights, liberties, privileges, hereditaments and appurtenances whatsoever unto any of the hereinbefore-mentioned premises and estates belonging or appertaining, and the reversions and remainders, rents, issues and profits thereof, including all property acquired by the Receivers in said causes by use of such rents, issues and profits, and all the estate, right, title, interest, rents, property, claim and demand of every nature and kind whatsoever of the said Norfolk and Western Railroad Company owned and possessed on said last-mentioned date or thereafter acquired in or to the same or any part or parcel thereof.

66 IX. Also the following ships or vessels more particularly described in the supplemental and amended bill of the complainant The Mercantile Trust Company, filed in said causes, viz.:

(*a*) A certain steam-tug called the "N. & W. 1," and more particularly described in a certificate of enrollment granted to said steam-

tug at the port of Philadelphia, and by Permanent Certificate No. 112; Official Number, Numerals 130,500, Letters K. H. M. V.

(*b*) A certain steam-tug called the "N. & W. 2," and more particularly described in a certificate of enrollment granted to said steam-tug at the port of Philadelphia, and by Permanent Certificate No. 144; Official Number, Numerals 130,512, Letters K. H. S. B.

(*c*) A certain coal barge called the "N. & W. 1," and more particularly described in a certificate of enrollment granted to said coal barge at the port of Philadelphia, and by Permanent Certificate No. 333; Official Number, Numerals 130,469, Letters K. H. C. M.

(*d*) A certain coal barge called the "N. & W. 2," and more particularly described in a certificate of enrollment granted to said coal barge at the port of Philadelphia, and by Permanent Certificate No. 110; Official Number, Numerals 130,489, Letters K. H. L. G.

(*e*) A certain coal barge called the "N. & W. 3," and more particularly described in a certificate of enrollment granted to the said coal barge at the port of Philadelphia, and by Permanent Certificate No. 111; Official Number, Numerals 130,470; Letters —.

(*f*) A certain coal barge called the "N. & W. 4," and more particularly described in a certificate of enrollment granted to the said coal barge at the port of Philadelphia, and by Permanent Certificate No. 94; Official Number, Numerals 130,485, Letters K. H. G. Q.

(*g*) A certain coal barge called the "N. & W. 5," and more particularly described in a certificate of enrollment granted to the said coal barge at the port of Philadelphia and by Permanent Certificate No. 95; Official Number, Numerals 130,499, Letters K. H. M. S.

(*h*) A certain coal barge called the "N. & W. 6," and more particularly described in a certificate of enrollment granted to the said coal barge at the port of Philadelphia and by Permanent Certificate No. 107, Official Number, Numerals 130,493, Letters K. H. L. S.

And, also,

(*i*) A certain harbor barge called "No. 21," constructed of wood, having a deck length of 100 feet, a floor length of 90 feet, beam, 26 feet, and depth, 7 feet.

(*j*) A certain harbor barge called "No. 22," constructed
67 of wood, having a deck length of 100 feet, a floor length of 90 feet, beam, 26 feet, and depth, 7 feet.

(*k*) A certain harbor barge called "No. 23," constructed of wood, having a deck length of 100 feet, a floor length of 90 feet, beam, 26 feet, and depth, 7 feet.

Together with the masts, yards, sails, rigging, boilers, engines, machinery, anchors, cables, chains, boats, tackle, apparel and appurtenances of the said two steam-tugs and the said nine barges hereinbefore described.

X. Also all bonds and shares of stock held by The Mercantile Trust Company as Trustee under said One-Hundred-Year Mortgage, including the following, viz.: 220 Clinch Valley Division first mortgage bonds of the Norfolk and Western Railroad Company of $1000 each, aggregating $220,000; and 1,051 shares of the common stock of the Norfolk and Western Railroad Company.

Together with all net income and other property received by the

Receivers of said Railroad Company in the management or operation of the mortgaged premises embraced in this deed of conveyance, or pertaining thereto, and all property of the said Railroad Company appurtenant to said premises or acquired for use in connection with or for the purposes of said railroads and properties, including all rolling stock and engines acquired by said Receivers with the proceeds of their certificates or notes to be paid under the provisions of said decrees by the purchasers, their successors or assigns.

Not including, however, any leases and contracts sold with the said premises which the parties of the fifth part have elected, or which within ninety days after the completion of the sale and delivery of this deed the said new corporation the Norfolk and Western Railway Company may elect not to assume or adopt, and excepting in particular the following leases and contracts which the parties of the fifth part have elected and by acceptance of this deed, do elect not to assume or adopt, to-wit:

68 Agreement dated August 1st, 1892, between Pullman's Palace Car Company and the Norfolk and Western Railroad Company.

Agreement dated January 15th, 1892, between the Lynchburg and Durham Railroad Company, the Penn Construction Company and the Norfolk and Western Railroad Company, and agreements amendatory thereof or supplemental thereto dated respectively January 5th, 1893, February 20th, 1893, and June 29th, 1893.

Lease, dated April 28th, 1893, from the Lynchburg and Durham Railroad Company to the Norfolk and Western Railroad Company.

Agreement, dated January 9th, 1892, and January 26th, 1892, between the Virginia and North Carolina Construction Company and the Norfolk and Western Railroad Company.

Agreement dated February 25th, 1892, between the Roanoke and Southern Railway Company, the Virginia and North Carolina Construction Company and the Norfolk and Western Railroad Company.

Lease, dated March 16th, 1892, from the Roanoke and Southern Railway Company to the Norfolk and Western Railroad Company.

Agreement dated December 31st, 1889, between Norfolk and Western Railroad Company and Southern Express Company, and all agreements supplemental thereto.

Agreement dated April 27th, 1891, between Norfolk and Western Railroad Company, the Southern Express Company and the Adams Express Company.

Supplemental agreement dated April 27th, 1891, between Norfolk and Western Railroad Company and Adams Express Company.

Contract, dated December 28th, 1891, between the Norfolk and Western Railroad Company and J. Kennedy Tod & Co.

Contract, evidenced by correspondence, dated April, 1893, between the Norfolk and Western Railroad Company and the Standard Oil Company.

Contract, evidenced by telegram, dated March 18th, 1893, between the Norfolk and Western Railroad Company and the Radford Electric Light Company.

Contract, evidenced by correspondence, dated in 1891, between the Norfolk and Western Railroad Company and the Lambert Point Knitting Mill Company.

Contract, dated February 29th, 1892, and contract dated October 4th, 1892, between the Norfolk and Western Railroad Company and the Virginia and Tennessee Coal and Iron Company.

Contract, dated November 11th, 1892, between the Norfolk and Western Railroad Company and the Dunn Coal Land Company.

Contract, evidenced by correspondence, dated in 1894 and 1895, between the Norfolk and Western Railroad Company and the Norton Land and Improvement Company.

69 Contract, evidenced by correspondence, dated April 13th, 1893, between the Norfolk and Western Railroad Company and the Southwest Virginia Improvement Company.

Contract, evidenced by correspondence, dated May 9th, 1894, between the Norfolk and Western Railroad Company and the Crozer Iron Company.

Contract, dated July 23d, 1892, between the Norfolk and Western Railroad Company and the Indian Camp Mining Company.

Contract, dated September 29th, 1891, between the Norfolk and Western Railroad Company and the Virginia Mining and Investment Company.

Contract, dated July 16th, 1891, between the Norfolk and Western Railroad Company and the Virginia Mining and Investment Company.

Contract, dated April 17th, 1892, between the Norfolk and Western Railroad Company and Joseph Pelter.

Contract, evidenced by correspondence dated December, 1892, between the Norfolk and Western Railroad Company and Whitehurst & Smith.

Contract, dated April 25th, 1893, between the Norfolk and Western Railroad Company, the Roanoke and Southern Railway Company and the Castle Rock Mining Company.

Contract, evidenced by correspondence, dated in June and November, 1894, between the Norfolk and Western Railroad Company and the Consolidated Mining Company.

Contract, dated September 29th, 1892, between the Norfolk and Western Railroad Company and the Flat Top Coal Land Association.

Contract, evidenced by correspondence dated in February and March, 1894, between the Norfolk and Western Railroad Company and Baker & Spitler.

Contract, evidenced by correspondence, dated 1891 and 1893, between the Norfolk and Western Railroad Company and the Upland Coal and Coke Company.

Contract, dated October 5th, 1892, between the Norfolk and Western Railroad Company and the Elkridge Coal and Coke Company.

Contract, evidenced by correspondence, dated February, 1893, between the Norfolk and Western Railroad Company and C. S. Hutter.

Contract, dated September 29th, 1891, between the Norfolk and

Western Railroad Company and the Virginia Mining and Investment Company.

Contract, dated July 16th, 1891, between the Norfolk and Western Railroad Company and the Virginia Mining and Investment Company.

Contract, dated April 17th, 1892, between the Norfolk and Western Railroad Company and Joseph Pelter.

70 To have and to hold, all and singular, the above mentioned and described railroads and branches, rights, privileges, franchises and property hereby conveyed unto the said George Coppell, J. Kennedy Tod, Victor Morawetz and William E. Glyn, as joint tenants and not as tenants in common, for the use benefit and behoof of said Norfolk and Western Railway Company, and its successors and assigns forever—the said Norfolk and Western Railway Company being hereby invested with the same, pursuant to the before-mentioned Act of Assembly—as fully and completely as the said Norfolk and Western Railroad Company, defendant in said several causes in equity, held or enjoyed the same at the time of the entry of said decrees, or held or enjoyed, or was entitled to hold or enjoy, the same at the time of the execution of said One-Hundred-Year Mortgage, or at any time since, and freed and discharged from the lien and incumbrance of said One-Hundred-Year Mortgage, and from the equity of redemption and claims of all other parties to said causes and those claiming under them, save only as reserved or excepted in said several decrees and in this deed of conveyance, as fully and absolutely as the said G. E. Bowden and Charles Sharp, Special Masters as aforesaid, may or ought, by virtue of the said decrees, to convey the same.

Subject, however, as to certain portions of the above-described railroads and appurtenances and equipment to the following mortgages, deeds of trust and liens so far as they attach to such railroads, appurtenances and equipment, and now constitute liens thereon viz.:

1. A certain mortgage of the Norfolk and Petersburg Railroad Company, dated September 11th, 1868, called the "Norfolk and Petersburg 2d Mortgage," under which there are outstanding or unpaid bonds to the amount of	$496,000
2. A certain mortgage of the Southside Railroad Company, dated October 19th, 1868, called the "Southside Railroad and Consolidated Mortgage"; under which there are outstanding or unpaid bonds to the amount of	1,013,300

71

3. A certain enlarged mortgage of the Virginia and Tennessee Railroad Company, dated January 5th, 1855, under which there are outstanding or unpaid bonds to the amount of	985,000
4. A certain lien to secure six per cent. preferred stock of the Virginia and Tennessee Railroad Company, of which there are outstanding	10,900

5. A certain fourth mortgage of the Virginia and Tennessee Railroad Company, under which there are outstanding or unpaid bonds to the amount of... 1,000,000

6. A certain mortgage of the Norfolk and Western Railroad Company, dated May 4th, 1881, called its "General Mortgage," executed to the Fidelity Insurance, Trust and safe Deposit Company, Trustee, to secure an issue of bonds, of which there are outstanding or unpaid bonds to the amount of..... 7,283,000

7. A certain mortgage of the Norfolk and Western Railroad Company, dated May 12th, 1882, called its "New River Division First Mortgage," executed to the Fidelity Insurance, Trust and Safe Deposit Company, Trustee, to secure an issue of bonds the authorized amount of which was limited, by an agreement dated December 21st, 1883, to $2,000,000, and under which mortgage there are outstanding and unpaid bonds to the amount of..... 2,000,000

8. A certain mortgage of the Norfolk and Western Railroad Company, dated December 21st, 1883, called its "Improvement and Extension Mortgage," executed to the Fidelity Insurance, Trust and Safe Deposit Company, Trustee, to secure an issue of bonds the authorized amount of which was limited, by an agreement dated October 29th, 1889, to $5,000,000, and under which mortgage there are outstanding and unpaid bonds to the amount of.. 5,000,000

9. A certain mortgage of the Norfolk and Western Railroad Company, dated October 29th, 1884, its "Adjustment Mortgage," executed to the Fidelity Insurance, Trust and Safe Deposit Company, Trustee, to secure an issue of bonds of which there are outstanding or unpaid bonds to the amount of.... 1,500,000

10. A certain mortgage of the Norfolk and Western Railroad Company, dated June 1st, 1887, called its "Clinch Valley Division Mortgage," executed to the Fidelity Insurance, Trust and Safe Deposit Company, Trustee, to secure an issue of bonds of which there are outstanding or unpaid bonds to the amount of 2,720,000

72 Subject also to the performance by the purchasers, or such new corporation constituted by them as aforesaid, the Norfolk and Western Railway Company, their or its successors and assigns, of all pending contracts in respect of said railroads, properties and franchises hereby conveyed, lawfully made by the Receivers of the Norfolk and Western Railroad Company before such sale thereof.

Subject further to the express condition that, to the extent that the assets or the proceeds of assets in the Receivers' hands not subject to any other lien or charge shall be insufficient for that purpose, such purchasers, or such new corporation constituted by them,

their or its successors or assigns, shall pay, satisfy and discharge (*a*) any unpaid compensation which shall be allowed by said United States Circuit Court for the Eastern District of Virginia, to the Receivers; (*b*) all unpaid Receivers' certificates or notes issued by authority of said Court; (*c*) any other indebtedness and obligations or liabilities which shall have been contracted or incurred by the Receivers before delivery of possession of the property sold, in the management, operation, use or preservation thereof; and (*d*) also all unpaid indebtedness or liability prior in lien or superior in equity to said One-Hundred-Year Mortgage (except such as shall be paid or satisfied by the Receivers) which was contracted or incurred by said defendant railroad company in the operation of said railroads and property sold, upon the Court adjudging the same to be prior in lien or superior in equity to said mortgage and directing payment thereof; all such payments for any such purpose made by the purchasers or such new corporation constituted by them, their or its successors or assigns in advance of the final accounting and discharge of the Receivers to be treated as advances and to be subject to final adjustment upon such accounting.

Subject also to the payment by said purchasers, or such new corporation, their or its successors or assigns, to the respective
73 holders of any of said One-Hundred-Year Mortgage bonds or the coupons for interest thereon which shall not have been turned in by such purchasers, their successors or assigns, as aforesaid, of the pro rata share of the purchase money applicable to the pro rata payment of such bonds upon application of the purchase money bid towards payment of all of said One-Hundred-Year Mortgage bonds, amounting in the aggregate to $16,190,000 principal besides the interest thereon, as provided in said decrees; and also subject to the payment by such purchasers, or such new corporation constituted by them, their or its successors or assigns, of such further sums as may be required to pay all unpaid costs, expenses of sale and the compensation of the Special Masters, and all other charges, compensations, allowances and disbursements payable out of the purchase price bid for said premises, as the same shall hereafter be fixed and allowed by the Court.

Subject also to the express condition that to the extent that the assets or proceeds of assets in the Receivers' hands shall be insufficient for that purpose, said purchasers, or such new corporation constituted by them, their or its successors or assigns, shall pay, satisfy and discharge (*a*) any unpaid compensation of the Receivers and any costs which shall be allowed by any of the said United States Circuit Courts for the Western District of Virginia, the District of West Virginia, the Southern District of Ohio, Western Division, and the Eastern District of Pennsylvania, respectively; (*b*) any unpaid indebtedness, obligations or liabilities which shall have been contracted or incurred by the Receivers within the jurisdiction of any of said United States Circuit Courts for said several districts, before delivery of the possession of the railroads and property sold situated within the said several districts respectively, in the management, operation, use or preservation thereof; and (*c*) all unpaid indebted-

ness or liability contracted or incurred by said defendant Norfolk and Western Railroad Company within the said dis-
74 tricts, respectively, in the operation of said railroads and properties sold, except such as shall be paid or satisfied by the said Receivers upon the said Courts respectively adjudging the same to be prior in lien or superior in equity to the said One-Hundred-Year Mortgage and directing the payment thereof; all payments for any such purpose made by the said purchasers or by such new corporation constituted by them, their or its successors or assigns, in advance of the final accounting and dis-its successors or assigns, in advance of the final accounting and discharge of the Receivers,to be treated as advances and subjects to final adjustment on such accounting; and for the purpose of enforcing the foregoing provisions, jurisdiction is retained by said several Courts and the right is reserved by the said several Courts respectively, as provided in said respective decrees of said Courts confirming said sales to retake and resell any portion of said property situated within the districts of said Courts respectively in case such purchasers, or such new corporation, or their or its successors or assigns, should fail to comply with any order of said several Courts, respectively, in respect of the payment of said prior indebtedness or liabilities within thirty days after the service of a copy of such order.

Provided, however, that upon publication by the Receivers, when ordered by the Circuit Court of the United States for the Eastern District of Virginia as provided in its said decree, of a notice requiring holders of any claims to present the same for allowance, any such claims which shall not be so presented or filed within the period of six months after the first publication of such notice shall not be enforceable against the said Receivers or against the property sold or against the purchasers or such new corporation, their or its successors or assigns.

And subject also to all the conditions and reservations of each of said several decrees of foreclosure and sale and said several decrees confirming the said sale entered in said United States Circuit
75 Courts for the Eastern District of Virginia, the Western District of Virginia, the District of West Virginia, the Southern District of Ohio, Western Division, and the Eastern District of Pennsylvania, respectively, including the reservation to the said courts of power to retake and resell the premises conveyed in case said purchasers, parties of the fifth part, or such new corporation constituted by them, or their or its successors or assigns, should fail to pay any sum required to be paid by them or it under the said decrees within the time specified in said decrees respectively after the entry of an order requiring such payment.

And this Indenture further witnesseth, That

Whereas, Frederick J. Kimball and the said Henry Fink, party of the second part hereto, were appointed receivers of the railroads, property and effects of said Norfolk and Western Railroad Company, party of the fourth part hereto, by a decree and order of the United States Circuit Court for the Eastern District of Virginia in the

above-mentioned cause therein pending, and subsequently by decrees entered by the United States Circuit Courts for the Western District of Virginia, the District of West Virginia and the Eastern District of Pennsylvania in said ancillary causes therein pending, were appointed auxiliary receivers for, and within the territorial jurisdiction of, said courts respectively, with the powers, responsibilities and duties conferred upon them by the order appointing them receivers entered by said United States Circuit Court for the Eastern District of Virginia; and

Whereas, the said Henry Fink, by decree entered by said United States Circuit Court for the Southern District of Ohio, Western Division, in said ancillary cause therein pending, was appointed sole ancillary receiver of all such portions of said railroads and property situated within the territorial jurisdiction of said court; and

Whereas, in and by said decrees of foreclosure and sale, and the said decrees confirming the sale of the said railroads
76 and branches, rights, privileges, franchises and property, the said Receivers were directed to make, execute and deliver to the said purchasers a good and sufficient deed of conveyance of any and all property of said defendant Norfolk and Western Railroad Company appurtenant to said premises, or acquired for use in connection with, or for the purposes of, said railroads and properties, including all rolling stock and engines acquired by said Receivers with the proceeds of the receivers' certificates or notes to be paid by the said purchasers, their successors or assigns, as provided in said decrees; and the said Henry Fink was authorized, in the absence of said Frederick J. Kimball, to execute such deed alone as such Receiver, and thereby to convey to such purchasers, their successors or assigns, all the right, title and interest of both of said Receivers in and to any and all such property as fully as though such deed were executed by both said Frederick J. Kimball and said Henry Fink as Receivers:

Now, therefore, The said Henry Fink, as Receiver as aforesaid, party of the second part hereto, for and in consideration of the premises and of the sums so as aforesaid paid by the said parties of the fifth part, and in pursuance of the said decrees and orders of said courts respectively, has bargained, sold, assigned, transferred and conveyed, and by these presents does grant, bargain, sell, assign, transfer and convey, unto the said parties of the fifth part as aforesaid, for the use, benefit and behoof of said Norfolk and Western Railway Company, the new corporation or body politic and corporate constituted by said purchasers as aforesaid, any and all property of said defendant Norfolk and Western Railroad Company appurtenant to said railroads and branches, rights, privileges, franchises and property above described and by this instrument conveyed, or acquired for use in connection with or for the purposes of any of said railroads and branches, rights, privileges, franchises and property, including all rolling stock and engines acquired by the
77 said Receivers with the proceeds of the receivers' certificates or notes to be paid by such purchasers, their successors or assigns, as provided in the said decree.

To have and to hold, all and singular the said property, real and personal, unto the said parties of the fifth part, as joint tenants and not as tenants in common for the use, benefit and behoof of said Norfolk and Western Railway Company, the new corporation or body politic and corporate constituted by them as aforesaid, and its successors and assigns forever.

And this Indenture further witnesseth, that said The Mercantile Trust Company party of the third part hereto, as Trustee under the One-Hundred-Year Mortgage of said Norfolk and Western Railroad Company, dated October 29th, 1889, described in said decrees, in consideration of the premises and of the sum so as aforesaid paid by the said parties of the fifth part, and in pursuance of the said decrees of said courts respectively, has transferred and released, and hereby does transfer and release, to the said parties of the fifth part, as joint tenants and not as tenants in common, for the use, benefit and behoof of said Norfolk and Western Railway Company, the new corporation or body politic and corporate constituted by the said purchasers as aforesaid, and its successors and assigns forever, all the right, title and interest of said The Mercantile Trust Company under the said One-Hundred-Year Mortgage in or to the railroads and branches, rights, privileges, franchises, and property hereinbefore described and conveyed by the said parties of the first part, as Special Masters.

To have and to hold all and singular the said property, real and personal, unto the said parties of the fifth part, as joint tenants and not as tenants in common, for the use, benefit and behoof of
78 said Norfolk and Western Railway Company, the new corporation or body politic and corporate constituted by them as aforesaid, and its successors and assigns forever.

And this Indenture further witnesseth, that the said Norfolk and Western Railroad Company, party of the fourth part hereto, for and in consideration of the premises and in pursuance of the said decrees and orders of said courts respectively, has bargained, sold, assigned, transferred, conveyed and released, and by these presents does bargain, sell, assign, transfer, convey and release, unto the said parties of the fifth part, as joint tenants and not as tenants in common, for the use, benefit and behoof of the Norfolk and Western Railway Company, the new corporation or body politic and corporate so as aforesaid constituted by the said purchasers, all the right, title and interest of said Norfolk and Western Railroad Company, party of the fourth part, in and to the said railroads and branches, rights, privileges, franchises and property above described and conveyed by the said parties of the first part, as Special Masters.

To have and to hold, all and singular the said property, real and personal, unto the said parties of the fifth part, as joint tenants and not as tenants in common, for the use, benefit and behoof of said Norfolk and Western Railway Company, the new corporation or body politic and corporate constituted by them as aforesaid, and its successors and assigns forever.

And this Indenture further witnesseth, that the said George Coppell, J. Kennedy Tod, Victor Morawetz and William E. Glyn, parties

of the fifth part, being the purchasers of said railroads and branches, rights, privileges, franchises and property so as aforesaid sold under said decree of foreclosure and sale entered by the Circuit Court of the United States for the Eastern District of Virginia in the course of said suit in equity therein pending, have
79 declared and do hereby declare that, under and in pursuance of the laws of the State of Virginia and in particular the above-recited Act of Assembly of said State approved January 15th, 1896, they do constitute a corporation or body politic and corporate by the name of "Norfolk and Western Railway Company," they having selected said name as the name of such corporation or body politic and corporate, and that all the said railroads and branches, rights, privileges, franchises and property granted, bargained, sold, assigned, released, conveyed and confirmed by the parties of the first, second, third and fourth parts, or by any of said parties, shall be, and hereby are, vested in said Norfolk and Western Railway Company, the new corporation or body politic and corporate so constituted, and its successors and assigns forever.

The party of the sixth part, its successors and assigns, shall have the right within ninety days after the delivery of this deed, to elect whether or not to assume or adopt any of the leases or contracts sold with said railroad and other property and franchises, and the party of the sixth part, its successors and assigns, shall not be held to have assumed any of said leases or contracts which it or they shall so elect not to assume.

In order to facilitate the recording thereof, five originals of this deed have been executed, acknowledged and delivered by the respective parties, all or any one or more of which may be recorded and each of which when executed, acknowledged and delivered shall be deemed an original, and all collectively but one instrument.

It is understood that no personal covenant or liability is to be implied from this deed against the said parties of the first, second, third or fourth parts, or against any of said parties; and that no personal obligations are assumed hereunder by the purchasers, but any such obligations shall only be corporate obligations of the new corporation, the Norfolk and Western Railway Company.

80 *In Witness Whereof*, the parties hereto of the first, second and fifth parts have hereunto set their hands and seals, and the parties of the third and fourth parts have caused these presents to be signed by their respective officers duly authorized and their respective corporate seals to be hereunto affixed and attested by their respective Secretaries, the day and year first above written.

G. E. BOWDEN. [SEAL.]
CHARLES SHARP. [SEAL.]
Special Masters.
HENRY FINK, *Receiver.* [SEAL.]

Signed, sealed, acknowledged, and delivered by G. E. Bowden, Charles Sharp and Henry Fink in the presence of
G. C. CALLAHAN.
H. J. CARRIGAN.

THE MERCANTILE TRUST COMPANY,
By LOUIS FITZGERALD, *President.*

[Seal The Mercantile Trust Company, 1873.]

Attest:
C. HUNTER,
Ass't Secretary.

Signed, sealed, acknowledged and delivered by The Mercantile Trust Company in the presence of
GEO. V. TURNER.
WILLIAM H. CLARKSON.

NORFOLK & WESTERN RAILROAD COMPANY,
By JOS. I. DORAN, *President, Pro Tem.*

[Seal Norfolk & Western Railroad Company. Organized 1881.]

Attest:
A. J. HEMPHILL, *Secretary.*

81 Signed, sealed, acknowledged and delivered by the Norfolk and Western Railroad Company in the presence of
G. C. CALLAHAN.
H. J. CARRIGAN.

GEORGE COPPELL. [SEAL.]
J. KENNEDY TOD. [SEAL.]
VICTOR MORAWETZ. [SEAL.]
WILLIAM E. GLYN. [SEAL.]
Purchasers.

Signed, sealed, acknowledged and delivered by George Coppell, J. Kennedy Tod, Victor Morawetz and William E. Glyn in the presence of
G. C. CALLAHAN.
H. J. CARRIGAN.

STATE OF VIRGINIA, *City of Norfolk,* ss:

I, L. D. Starke, Jr., a Notary Public in and for the State and City aforesaid, do hereby certify that George E. Bowden and Charles Sharp, Special Masters appointed by the United States Circuit Courts for the Eastern District of Virginia, the Western District of Virginia, the District of West Virginia, the Southern District of Ohio, Western Division, and the Eastern District of Penn-

sylvania, in the causes in the foregoing Deed of Conveyance mentioned for the purpose of making the sale therein referred to and whose names are signed to the foregoing deed of conveyance or writing above bearing date on the twenty-fourth day of September, 1896, and who executed the same, have this day personally appeared before me, the subscriber, and have severally duly acknowledged the same before me in my State and City
82 aforesaid to be their act and deed, and severally duly acknowledged that they executed the same as their free and voluntary act and deed for the uses and purposes therein expressed and mentioned, to the end that the same might be recorded as such.

Given under my hand and official seal this 24th day of September in the year one thousand eight hundred and ninety-six.

[Seal L. D. Starke, Jr., Notary Public, City of Norfolk, Va.]

L. D. STARKE, JR.,
Notary Public for the City of Norfolk,
State of Virginia.

STATE OF VIRGINIA, *City of Norfolk, ss:*

I, L. D. Starke, Jr., a Notary Public in and for the State and City aforesaid, do hereby certify that Henry Fink, Receiver appointed by the United States Circuit Courts for the Eastern District of Virginia, the Western District of Virginia, the District of West Virginia, the Southern District of Ohio, Western Division, and the Eastern District of Pennsylvania, in the causes in the foregoing Deed of Conveyance mentioned for the purpose of making the sale therein referred to, and whose name is signed to the foregoing deed of conveyance or writing above, bearing date on the twenty-fourth day of September, 1896, and who executed the same, has this day personally appeared before me, the subscriber, and has duly acknowledged the same before me in my State and City aforesaid to be his act and deed as such Receiver, and duly acknowledged that he executed the same as his free and voluntary act and deed as such Receiver for the uses and purposes therein expressed and mentioned, to the end that the same might be recorded as such.

Given under my hand and official seal this 24th day of
83 September in the year one thousand eight hundred and ninety-six.

[Seal L. D. Starke, Jr., Notary Public, City of Norfolk, Va.]

L. D. STARKE, JR.,
Notary Public for the City of Norfolk,
State of Virginia.

STATE OF NEW YORK, *City and County of New York:*

I, William H. Clarkson, a Commissioner of Deeds in the State of New York, thereunto appointed by the Governor of the State of Virginia, and a Notary Public for the City and State aforesaid, do

certify that Louis Fitzgerald, with whom I am personally acquainted, and to me known to be the President of the Mercantile Trust Company, whose name is signed to the foregoing Deed of Conveyance or writing of The Mercantile Trust Company, dated the twenty-fourth day of September, A. D. 1896, has this day personally appeared before me in the City and County of New York aforesaid, produced before me the said deed of conveyance or writing, and then and there acknowledged the same before me, in my City aforesaid, and has further acknowledged and declared that he executed the same as President of The Mercantile Trust Company, and for and on behalf of said Company as its and his voluntary act and deed for the purposes therein named, having, as such President, signed his name thereto and affixed the corporate seal of said Company, and consented that the same might be recorded; and that he has caused the same to be duly attested by C. Hunter, the Assistant Secretary of said Company; all of which has been done by him under and pursuant to authority duly given and conferred on him by the said Company.

I do further certify that C. Hunter, with whom I am personally acquainted and to me known to be the Assistant
84 Secretary of The Mercantile Trust Company, whose name is also signed to the foregoing deed of conveyance or writing, dated the 24th day of September, A. D. 1896, as hereinbefore referred to, has also this day personally appeared before me, in my City, produced to me the said deed of conveyance or writing, and then and there acknowledged the same, and declared that, by the direction of said Louis Fitzgerald, as President of The Mercantile Trust Company, and under and pursuant to authority duly given and conferred by the said Company, he has duly attested the said deed and has signed his name to said attestation.

And on the same day came the said Louis Fitzgerald and the said C. Hunter, each of whom being duly and separately sworn, did depose and say that the said Louis Fitzgerald is the President of the said The Mercantile Trust Company, and the said C. Hunter is the Assistant Secretary of the said The Mercantile Trust Company, described in the foregoing deed of conveyance or writing above, bearing date the 24th day of September, A. D. 1896, and producing before me the foregoing deed of conveyance or writing, they then and there signed the same and acknowledged the same to be their voluntary act and deed and that of the said Company; and did further say that they know the corporate name and seal of the said The Mercantile Trust Company; that the name and seal signed and affixed to the foregoing deed of conveyance or writing are such name and seal; that the said name was signed and said corporate seal was affixed to the foregoing deed of conveyance or writing by order and authority of the said Company duly given and conferred; that they and each of them signed his name thereto by the like order and authority, as President and Assistant Secretary thereof, and that they were duly authorized to execute and acknowledge the same on behalf of the said Company.

85 Given under my hand and notarial seal this 23d day of September, A. D. 1896.

[Seal Wm. H. Clarkson, a Commissioner for the State of Virginia in the State and City of New York.]

WILLIAM H. CLARKSON,
Commissioner of Deeds for the State of Virginia in New York.

[Seal Wm. H. Clarkson, Notary Public, New York County.]

WILLIAM H. CLARKSON,
Notary Public for the City and County of New York in the State of New York.

STATE OF VIRGINIA, *City of Norfolk:*

I, L. D. Starke, Jr., a Notary Public for the City and State aforesaid, do certify that Joseph I. Doran, with whom I am personally acquainted, and to me known to be the President *pro tempore* of the Norfolk and Western Railroad Company, whose name is signed to the foregoing Deed of Conveyance or writing of said Norfolk and Western Railroad Company, dated the twenty-fourth day of September, A. D. 1896, has this day personally appeared before me in my City aforesaid, produced before me the said deed of conveyance or writing, and then and there acknowledged the same before me, in my City aforesaid, and has further acknowledged and declared that he executed the same as President *pro tempore* of said Norfolk and Western Railroad Company, and for and on behalf of said Company as its and his voluntary act and deed for the purposes therein named, having as such President *pro tempore*, signed his name thereto, and affixed the corporate seal of said Company, and consented that the same might be recorded; and that he has caused the same to be duly attested by A. J. Hemphill, the Secretary of said Company; all of which has been done by him under and pursuant to authority
86 duly given and conferred on him by the said Norfolk and Western Railroad Company.

I do further certify that A. J. Hemphill, with whom I am personally acquainted, and to me known to be the Secretary or said Norfolk and Western Railroad Company, whose name is also signed to the foregoing deed of conveyance of writing, dated the 24th day of September, A. D. 1896, as hereinbefore referred to, has also this day personally appeared before me in my city, produced to me the said deed of conveyance or writing, and then and there acknowledged the same, and declared that by the direction of Joseph I. Doran, as President *pro tempore* of said Company, and under and pursuant to authority duly given and conferred by the said Company, he has duly attested the said deed, and has signed his name to said attestation.

And on the same day personally came the said Joseph I. Doran and the said A. J. Hemphill, each of whom being duly and separately sworn did depose and say that the said Joseph I. Doran is the President *pro tempore* of the said Norfolk and Western Railroad

Company, and the said A. J. Hemphill is the Secretary of the said Company, described in the foregoing deed of conveyance or writing above, bearing date the 24th day of September, A. D. 1896, and producing before me the foregoing deed of conveyance or writing they then and there signed the same and acknowledged the same to be their voluntary act and deed and that of the said Company; and did further say that they know the corporate name and seal of the said Norfolk and Western Railroad Company; that the name and seal signed and affixed to the foregoing deed of conveyance or writing are such name and seal; that the said name was signed and said corporate seal was affixed to the foregoing deed of conveyance or writing by order and authority of the said Company duly given and conferred; that they, and each of them signed his name thereto by the like order and authority, as President *pro tempore* and Secre-
87 tary thereof, and that they were duly authorized to execute and acknowledge the same on behalf of the said Company.

Given under my hand and notarial seal this 24th day of September, A. D. 1896.

[Seal L. D. Starke, Jr., Notary Public, City of Norfolk, Va.]

L. D. STARKE, JR.,
Notary Public for the City of Norfolk,
State of Virginia.

STATE OF VIRGINIA, *City of Norfolk, ss:*

I, L. D. Starke, Jr., a Notary Public in and for the State and City aforesaid, do hereby certify that George Coppell, J. Kennedy Tod, Victor Morawetz and William E. Glyn, parties named in, and whose names are signed to, the foregoing deed of conveyance or writing above, bearing date on the 24th day of September, 1896, and who executed the same, have this day personally appeared before me, the subscriber, and have severally acknowledged the same before me in my State and City aforesaid to be their act and deed, and severally duly acknowledge that they executed the same as their free and voluntary act and deed for the uses and purposes therein expressed and mentioned, to the end that the same might be recorded as such.

Given under my hand and official seal this 24th day of September, in the year one thousand eight hundred and ninety-six.

[Seal L. D. Starke, Jr., Notary Public, City of Norfolk, Va.]

L. D. STARKE, JR.,
Notary Public for the City of Norfolk,
State of Virginia.

STATE OF VIRGINIA, *City of Norfolk, ss:*

I, L. Royster, Clerk of Corporation Court of the City of Norfolk, in the State of Virginia, do hereby certify that L. D. Starke,
88 Jr., Esq., whose name is subscribed to the certificates of proof or acknowledgment of the annexed instrument and thereon written, was at the time of taking such proof or acknowledg-

ment a notary public in and for said city, residing in the said city, duly authorized to take the same; that I verily believe that the signature to the said certificates, proofs or acknowledgment is genuine, and that the said instrument is executed and acknowledged according to the laws of this State.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Corporation Court, at Norfolk, Va., this 24th day of September, 1896.

[Seal Corporation Court, City of Norfolk, Va.]

L. ROYSTER, *Clerk*.

VIRGINIA:

In the Clerk's Office of the County Court of Norfolk County, on the 24th day of September, 1896.

The foregoing deed between G. E. Bowden and Charles Sharp, as Special Masters, of the first part; Henry Fink, as Receiver, of the second part; the Mercantile Trust Company, Trustee, of the third part; the Norfolk and Western Railroad Company, of the fourth part; George Coppell, J. Kennedy Tod, Victor Morawetz and William E. Glyn, of the fifth part, and the Norfolk and Western Railway Company, of the sixth part; dated the 24th day of September, 1896, with the certificates of acknowledgments, etc., thereto annexed, was this day presented in said office, and the necessary tax on
89 recordation, $3,000, having been paid to me, the same is admitted to record.

Teste:

[Seal Norfolk County, Virginia.]

ALVAH H. MARTIN,
Clerk of the County Court of Norfolk County, Virginia.

Fee for recording, $17.

Paid:

ALVAH H. MARTIN, *Clerk*.

Deed Book 201, Page 452.

STATE OF VIRGINIA, *County of Norfolk, ss:*

This is to certify that the foregoing is a true and correct copy of the deed of conveyance between G. E. Bowden and Charles Sharp, as Special Masters, of the first part; Henry Fink, as Receiver, of the second part; The Mercantile Trust Company, trustee, of the third part; the Norfolk and Western Railroad Company, of the fourth part; George Coppell, J. Kennedy Tod, Victor Morawetz and William E. Glyn, of the fifth part; and the Norfolk and Western Railway Company, of the sixth part, dated the 24th day of September, 1896, with the certificates of acknowledgment thereto annexed, as the same has been presented and admitted for record in the Clerk's office of the County Court of said County.

In testimony whereof, I have hereunto set my hand and affixed the seal of the County Court of Norfolk, Va., this fifth day of October, 1896.

[Seal Norfolk County, Virginia.]

ALVAH H. MARTIN,
Clerk of the County Court of Norfolk County, in the State of Virginia.

90 Norfolk County.

D. B. 201, Page 473.

SCHEDULE C.

Plan of Organization of Norfolk and Western Railway Company.

Dated September 24th, 1896.

91 "SCHEDULE C."

Norfolk and Western Railway Company.

Plan of Organization.

STATE OF VIRGINIA, *City of Norfolk, ss:*

Whereas, in a certain consolidated cause in equity pending in the Circuit Court of the United States for the Eastern District of Virginia, wherein the Fidelity Insurance, Trust and Safe Deposit Company and The Mercantile Trust Company and others were complainants, and the Norfolk and Western Railroad Company, a corporation created by and existing under the laws of the State of Virginia, was defendant, it was sought to foreclose a deed of trust or mortgage, dated the twenty-ninth day of October, one thousand eight hundred and eighty-nine, and upon or about that day duly executed, acknowledged and delivered by said railroad company to The Mercantile Trust Company, of New York, and it was also proposed to sell the mortgaged property and premises, being the railroads and branches, rights, privileges, franchises and property of said railroad company in said mortgage described, and a decree was entered for the sale of said railroads and branches, rights, privileges, franchises and property, and the undersigned, George Coppell, J. Kennedy Tod, Victor Morawetz and William E. Glyn, whose names are subscribed hereto, became the purchasers of said railroads and branches, rights, privileges, franchises and property under such decree; and in pursuance of the said decree, and the decrees of the other courts in the deed of conveyance of said mortgaged premises mentioned, the said mortgaged premises were conveyed by G. E. Bowden and Charles Sharp, the Special Masters appointed by said United States
92 Circuit Court, to the said purchasers, as set forth in such deed, reference being hereby made to the same and to the

record thereof in the County Court of the County of Norfolk, in the State of Virginia, with the same effect as though such deed were incorporated at length herein; and

Whereas, the said purchasers, for the purpose of constituting a new corporation or body politic and corporate under and pursuant to the laws of the State of Virginia, and in particular the Act of Assembly of said State, approved January 15th, 1896, entitled "An Act authorizing the purchasers of the railroads and property of the Norfolk and Western Railroad Company sold by foreclosure of a deed of trust or mortgage thereon, to become and be a corporation, to adopt a name therefor, and to possess and exercise general and other powers," have selected as the name of such new corporation

"Norfolk and Western Railway Company"

as set forth in the deed of conveyance of said mortgaged premises, recorded in the County Court of the County of Norfolk, Virginia, being the court in which the said deed of conveyance was first admitted for record; and the said purchasers have associated with themselves Henry Fink, Joseph I. Doran and H. Snowden Marshall in the organization of such New Corporation as authorized by the said Act of Assembly.

Now, therefore, the said George Coppell, J. Kennedy Tod, Victor Morawetz and William E. Glyn, being the said purchasers, together with their said associates, in pursuance of the provisions of said act, have adopted, and do hereby adopt, the following plan of organization, viz:

I. They have accepted, and do hereby accept, the before mentioned Act of Assembly of the State of Virginia, approved January
93 15th, 1896, and anything herein contained or herefrom omitted to the contrary notwithstanding, they do reserve and retain the right from time to time to exercise and enjoy any and every right, power, privilege and franchise conferred in and by the said Act of Assembly of the State of Virginia, or by any other act or law of which said Norfolk and Western Railway Company may lawfully claim the benefit.

II. The said purchasers and their associates have elected to become and be a New Corporation or body politic and corporate under the said Act under the name of "Norfolk and Western Railway Company."

III. The purposes of said New Corporation, or body politic and corporate, shall be to have, hold, possess, maintain, operate and enjoy the railroads and branches, rights, privileges, franchises and property of said Norfolk and Western Railroad Company sold at said sale as aforesaid; and from time to time to have, hold, enjoy, possess and exercise any and all the rights, powers, privileges and franchises conferred by the said Act of Assembly of the State of Virginia, approved January 15th, 1896, or by any other act or law of which it may lawfully claim the benefit.

IV. Said New Corporation, in addition to its other powers, may by purchase, by consolidation, or merger of capital stock, property and franchises, by lease or otherwise in such manner and on such

terms as, from time to time, shall be approved of by its Board of Directors, subject to any limitations which may be prescribed in its by-laws, acquire the ownership or control of, and operate, any or all of the lines of railroad owned, leased or operated by said Norfolk and Western Railroad Company, whether located in the State of Virginia or any other State or States, and any branches or extensions thereof, and also any and all of the rolling stock owned or used by said Norfolk and Western Railroad Company, and any
94 terminals, wharves, warehouses, hotels, machine works and other similar properties and plants, of any corporation or corporations managed or controlled by said Norfolk and Western Railroad Company; and it may so acquire the stock and bonds, property and franchises of the corporation or corporations owning; or from which are derived, any such railroads, properties and plants.

V. The capital stock of said New Corporation, the Norfolk and Western Railway Company, shall be eighty-nine million dollars ($89,000,000).

Such capital stock shall be issued of two classes or kinds, of which one class or kind shall be designated as "Common Stock," and shall consist of six hundred and sixty thousand (660,000) shares of the par value of $100 each, amounting in the aggregate to sixty-six million dollars ($66,000,000), and the other class or kind shall be designated as "Adjustment Preferred Stock," and shall consist of two hundred and thirty thousand (230,000) shares of the par value of $100 each, amounting in the aggregate to twenty-three million dollars ($23,000,000).

Such stocks shall be issued with the following preferences, conditions and voting power, viz:

The holders of the Adjustment Preferred Stock shall be entitled to non-cumulative dividends for each fiscal year, when and as declared by the Board of Directors of said New Corporation, to the extent of four per cent. per annum, payable out of any surplus net profits of said New Corporation, as determined by said Board, before any dividend shall be declared or paid in or for such fiscal year on the Common Stock; and, in case of liquidation or distribution of the capital of said New Corporation, the holders of the Adjustment preferred Stock shall be entitled to receive the par amount of their stock out of the assets of such New Corporation in priority to any payment therefrom on the Common Stock. Dividends
95 on the Common Stock may be declared and paid out of any surplus net profits remaining from any previous fiscal year or years, for which the full dividends at the rate of four per cent. per annum shall have been paid on the Adjustment Preferred Stock; but no dividends shall be paid on the Common Stock out of surplus net profits of any year for which the full dividends shall not have been paid on the Adjustment Preferred Stock.

During the period of five years after the organization of said New Corporation, unless full yearly dividends at the rate of four per cent. per annum shall have been paid on the Adjustment Preferred Stock for three years before the expiration of that period, two-thirds of the whole Board of Directors of said New Corporation shall be elected, by separate ballot, by vote of the holders of a majority of the

Adjustment Preferred Stock upon which votes shall be cast at the respective elections of directors, and the remainder of the Board shall be elected, by separate ballot, by vote of the holders of a majority of the Common Stock upon which votes shall be cast. After the expiration of five years, or after full yearly dividends on the Adjustment Preferred Stock shall have been paid for three years, the Adjustment Preferred Stock and the Common Stock shall rank equally share for share, at all elections, each share entitling the holder to one vote.

No mortgage other than the mortgages provided for in this plan of organization shall be placed by said New Corporation upon the railroads and branches, rights, privileges, franchises and property conveyed under said decree, or upon any other property formerly of the Norfolk and Western Railroad Company, or of the Roanoke and Southern Railway Company, or of the Lynchburg and Durham Railroad Company which may be acquired by said New Corporation, and the amount of the Adjustment Preferred Stock (namely $23,000,000) shall not be increased or decreased, except after obtaining, in each instance of the execution of any such mortgage or increase or decrease of stock, the consent of the holders of
96 two-thirds of the whole amount of the adjustment Preferred Stock then outstanding, given at a meeting of the stockholders called for that purpose, and the consent of the holders of a majority of such part of the Common Stock as shall be represented at such meeting, the holders of each class of stock voting separately.

The certificates for such Common Stock and Adjustment Preferred Stock shall be in such form as shall be determined by the Board of Directors of said New Corporation.

Each share of Common Stock and each share of Adjustment Preferred Stock shall entitle the holder to one vote, except, however, as herein otherwise provided, and subject to the foregoing provisions and to all rights of the holders of the Adjustment Preferred Stock. Each share shall be for the par amount of one hundred dollars.

The term "Common Stock" shall, for the purposes hereof, be held to include all stock which may be issued, other than such "Adjustment Preferred Stock."

VI. Said New Corporation, from time to time, shall create and issue its Bonds (herein called "First Consolidated Mortgage Bonds"), to be secured by a deed of trust or mortgage as hereinafter provided, to the amount of sixty-two million five hundred thousand dollars ($62,500,000), in the aggregate, which bonds shall be payable on October 1st, 1996, and shall bear interest from October 1st, 1896, payable semi-annually on the first days of April and October in each year, both principal and interest being payable in gold coin of the United States of the present standard of weight and fineness, without deduction for any tax or taxes which said Railway Company may be required to pay or to retain therefrom under any present or future law of the United States or of any State of Municipality thereof.

Said New Corporation shall execute to a Trustee, to secure

such First Consolidated Mortgage bonds, a deed of trust or
97 mortgage (herein called "First Consolidated Mortgage"), of and upon the railroads and branches, equipment, rights, privileges and franchises conveyed to said Purchasers and vested in such New Corporation, as aforesaid, and also any other railroads, branches, equipment, rights, privileges and franchises formerly of the Norfolk and Western Railroad Company, or of the Lynchburg and Durham Railroad Company, or of the Roanoke and Southern Railway Company, which said New Corporation hereafter may acquire; excepting, however, that such deed of trust or mortgage shall include property in the State of Maryland only if, and so far as, the Board of Directors of said New Corporation shall determine to include the same; and also of and upon any and all other railroads, franchises, bonds, stocks and other property which, by delivery, or by writing of any kind, shall be pledged, assigned or transferred by said New Corporation, or by any one in its behalf, to the Trustee under such First Consolidated Mortgage, or which, by any of the provisions of such First Consolidated Mortgage, shall be subjected to the lien and effect thereof; subject, however, as to any or all of such property and franchises, to any prior mortgages or liens thereon existing at the time of the acquisition thereof.

Such First Consolidated Mortgage bonds shall be issued and used in such manner and subject to such regulations and provisions as may be contained in such mortgage for the following purposes:

$23,322,675 of such First Consolidated Mortgage bonds shall be delivered, as hereinafter provided, to such Purchasers or their survivors, jointly, or upon the order of a majority of them.

$25,986,889 of such First Consolidated Mortgage bonds shall be issued, and used from time to time in such manner and on such terms as shall be specified in such First Consolidated Mortgage, only for the purpose of acquiring or taking up any of the follow-
98 ing outstanding bonds or obligations (or bonds issued in extension or renewal thereof), amounting in the aggregate to $23,388,200, viz:

(*a*) Bonds and obligations secured by Divisional Liens prior to the General Mortgage of said Norfolk and Western Railroad Company, dated May 4th, 1881, amounting to	$3,505,200
(*b*) Bonds of the Norfolk and Western Railroad Company issued under its General Mortgage, dated May 4th, 1881, executed to the Fidelity Insurance, Trust and Safe Deposit Company, Trustee, amounting to	7,283,000
(*c*) Bonds of the Norfolk and Western Railroad Company issued under its New River Division First Mortgage, dated May 12th, 1882, executed to the Fidelity Insurance, Trust and Safe Deposit Company, Trustee, amounting to	2,000,000
(*d*) Bonds of the Norfolk and Western Railroad Company issued under its Improvement and Extension Mortgage, dated December 21st, 1883, exe-	

cuted to the Fidelity Insurance, Trust and Safe Deposit Company, Trustee, amounting to..... 5,000,000

(*e*) Bonds of the Scioto Valley and New England Railroad Company issued under its First Mortgage, dated November 1st, 1889, executed to the Central Trust Company of New York, amounting to 5,000,000

(*f*) Bonds of the Columbus Connecting and Terminal Railroad Company issued under its First Mortgage, dated May 4th, 1892, executed to the Atlantic Trust Company, as Trustee..... 600,000

$9,690,436 of such First Consolidated Mortgage bonds may be issued, sold and used from time to time subject to such restrictions and at such rate per annum as shall be prescribed in said First Consolidated Mortgage, for the construction or acquisition of side tracks, second tracks, branches and equipment and for other improvements and additions to the property, which shall be covered by such mortgage and for other purposes of said New Corporation, as shall be provided in such First Consolidated Mortgage.

$3,500,000 of such First Consolidated Mortgage bonds may be issued, sold and used for the purpose of taking up or paying any other obligations or charges upon any property, formerly of the Norfolk and Western Railroad Company, which may be ac-
99 quired by said New Corporation, and for any other purposes of said New Corporation as may be provided in such First Consolidated Mortgage.

All new railroad property, including equipment, and all stocks and bonds, acquired by said New Corporation by use of any of said First Consolidated Mortgage Bonds (except the $23,322,675 first above mentioned, to be delivered to said purchasers or upon their order) shall be subjected to the lien of said First Consolidated Mortgage.

Power shall be reserved and provision shall be made in such First Consolidated Mortgage so that said New Corporation, at any time, may issue in lieu of all or any of such last-mentioned $3,500,000 of First Consolidated Mortgage Bonds, a like amount of Fifty-Year Four Per Cent. Prior Gold Bonds, payable, principal and interest, in the City of New York, N. Y., in gold coin of the United States of the present standard of weight and fineness, or instead of such Prior Lien Gold Bonds, 700,000 pounds sterling, of Fifty-Year Four Per Cent. Prior Sterling Bonds payable, principal and interest, in London, England (£200 sterling being taken as the equivalent of $1,000), all or any of which Prior Gold Bonds or Prior Sterling Bonds (as the case may be), shall be redeemable at 105 per cent. of their par value, and accrued interest, at any time, upon publication of notice of redemption at least three months prior to the date of redemption, the bonds so to be redeemed to be drawn by lot, if less than all shall be called for redemption; and so that said New Corporation may execute to secure such Prior Gold Bonds or Prior Sterling Bonds (as the case may be) a mortgage which shall

be prior and superior in lien to such First Consolidated Mortgage upon all the property covered thereby. In case of the issue of any of such Prior Gold Bonds or Prior Sterling Bonds the $3,500,000 First Consolidated Mortgage Bonds, or part thereof, in lieu of which such Prior Gold Bonds or Prior Sterling Bonds shall have been issued, shall thereafter be reserved to be issued in such manner
100 and upon such terms as shall be prescribed in such First Consolidated Mortgage for the redemption of such Prior Gold Bonds or Prior Sterling Bonds at 105 per cent. of their par value and accrued interest, as above provided, or for the purchase of such bonds at a lower price, all bonds so redeemed or purchased to be cancelled.

Power shall further be reserved and provision shall be made in such First Consolidated Mortgage and in the mortgage securing such Prior Gold Bonds or Prior Sterling Bonds, so that in case any of said outstanding bonds or obligations amounting in the aggregate to $23,388,200, cannot, on such terms as shall be provided in such First Consolidated Mortgage be taken up or paid at maturity by use of the First Consolidated Mortgage Bonds to be reserved for that purpose as above provided, then such bonds or obligations, and the mortgages and liens securing the same, may be extended, without impairment of lien, for such period and in such manner as the Board of Directors of said New Corporation may determine at a rate of interest not in excess of the rate now payable thereon, and so that the principal and interest of such extended bonds or obligations may be payable in gold coin of the United States of the present standard of weight and fineness: *provided*, however, that the amount of all said bonds and obligations for the acquisition or retirement of which First Consolidated Mortgage Bonds shall be reserved as aforesaid, including any such bonds extended, shall never exceed in the aggregate the amount of all such bonds and obligations now outstanding, namely $23,388,200.

Said First Consolidated Mortgage and the bonds thereby secured, and such other mortgages and the bonds thereby secured, respectively, may contain any terms and provisions, and may be of any form and tenor, which the Board of Directors of said New Corporation shall approve.

VII. Said New Corporation shall issue and deliver to such
101 Purchasers, or their survivors, jointly and not severally, or upon the order of a majority of them.

Twenty-three million three hundred and twenty-two thousand six hundred and seventy-five dollars ($23,322,675) in such First Consolidated Mortgage bonds at par;

Six hundred and sixty thousand (660,000) fully-paid and non-assessable shares of the said Common Stock of the aggregate par value of $66,000,000, and

Two hundred and thirty thousand (230,000) fully-paid and non-assessable shares of said Adjustment Preferred Stock of the aggregate par value of $23,000,000.

All of such Common Stock and Adjustment Preferred Stock shall be fully paid and free from any liability; and it is hereby expressly declared and agreed that said Purchasers shall not in any manner

be accountable for any of said First Consolidated Mortgage Bonds or shares of Common Stock or Adjustment Preferred Stock, or for the use of disposition thereof.

Any of the other bonds to be issued under any of said mortgages of the New Corporation, may, subject to the terms, conditions, reservations and restrictions which shall be contained in such mortgages respectively, be sold at such prices and on such terms as from time to time may be authorized by a majority of the whole Board of Directors, for the time being, of said New Corporation.

VIII. The first Board of Directors of said New Corporation shall consist of seven directors, and their names are: Henry Fink, George Coppell, J. Kennedy Tod, Victor Morawetz, William E. Glyn, Joseph I. Doran and H. Snowden Marshall and they shall hold office until their successors shall be elected. Said Board shall choose one of their number President, and shall appoint a Secretary of said New Company.

Said Board, by vote of a majority of its members, may increase its number to eleven by choosing four additional directors.

102 The number of directors of said New Corporation may thereafter from time to time be altered, and any vacancies in the Board may be filled in such manner as may be provided in the by-laws.

IX. Until by-laws shall have been adopted by the stockholders of said New Corporation said New Corporation shall be governed by by-laws to be adopted by the Board of Directors by vote of a majority of its members.

In Witness Whereof, the said purchasers and also their said associates have signed and sealed these presents this 24th day of September, 1896.

GEORGE COPPELL.	[L. S.]
J. KENNEDY TOD.	[L. S.]
VICTOR MORAWETZ.	[L. S.]
WILLIAM E. GLYN.	[L. S.]
HENRY FINK.	[L. S.]
JOS. I. DORAN.	[L. S.]
H. SNOWDEN MARSHALL.	[L. S.]

Signed, sealed and acknowledged in the presence of

A. J. HEMPHILL.
G. C. CALLAHAN.

STATE OF VIRGINIA, *City of Norfolk*, ss:

I, L. D. Starke, Jr., a Notary Public in and for the State and City aforesaid, do hereby certify that George Coppell, J. Kennedy Tod, Victor Morawetz, William E. Glyn, Henry Fink, Joseph I. Doran and H. Snowden Marshall, the parties named in and whose names are signed to the foregoing writing bearing date on the 24th day of September, 1896, have this day appeared before me, the subscriber, and have acknowledged the same before me, in my State and City

aforesaid, to be their act and deed to the end that the same might be recorded as such.

103 Given under my hand and official seal, this 24th day of September, in the year one thousand eight hundred and ninety-six.

[Seal L. D. Starke, Jr., Notary Public, City of Norfolk, Va.]

L. D. STARKE, Jr.,
Notary Public for the City of Norfolk.

STATE OF VIRGINIA, *City of Norfolk, ss:*

I, L. Royster, Clerk of the Corporation Court of the City of Norfolk, in the State of Virginia, do hereby certify that L. D. Starke, Jr., Esq., whose name is subscribed to the certificates of proof or acknowledgment of the annexed instrument and thereon written was at the time of taking such proof or acknowledgment, a Notary Public in and for said City, residing in said City, duly authorized to take the same; that I verily believe that the signature to the said certificate, proof or acknowledgment is genuine, and that the said instrument is executed and acknowledged according to the laws of this State.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the said Corporation Court, at Norfolk, Va., this 24th day of September, 1896.

[Seal Corporation Court, City of Norfolk, Virginia.]

L. ROYSTER,
Clerk.

VIRGINIA:

In the Clerk's Office of the County Court of Norfolk County on the 24th day of September, 1896.

The foregoing plan of organization of the "Norfolk and Western Railway Company," dated September 24th, 1896, with the certificate of acknowledgment thereto annexed, was this day presented in office and admitted to record.

Teste:

[SEAL.] ALVAH H. MARTIN,
Clerk of the County Court of Norfolk County, Virginia.

Deed Book 201, Page 473.

104 STATE OF VIRGINIA, *County of Norfolk, To-wit:*

I, Alvah H. Martin, Clerk of the County Court of Norfolk County, in the State of Virginia, do hereby certify that the foregoing is a true copy from the records of my office.

Given under my hand and the seal of said court, this 24th day of September, 1896.

[SEAL.] ALVAH H. MARTIN, *Clerk.*

STATE OF VIRGINIA, *City of Alexandria:*

I, Nevell S. Greenaway, a notary public for the city and State aforesaid, do certify that Henry Fink, with whom I am personally acquainted, and to me known to be the president of the Norfolk and Western Railway Company, whose name is signed to the foregoing certificate or writing of said Norfolk and Western Railway Company, dated the 30th day of December, A. D. 1896, has this day personally appeared before me, in my city aforesaid, produced before me the said certificate or writing and then and there acknowledged the same before me in my city aforesaid, and has further acknowledged and declared that he executed the same as president of said Norfolk and Western Railway Company, and for and on behalf of said company as its and his voluntary act and deed for the purposes therein named, having, as such president, signed his name thereto and affixed the corporate seal of said company, and consented that the same might be filed or recorded; and that he has caused the same to be duly attested by A. J. Hemphill, the secretary of said company; all of which has been done by him under and pursuant to authority duly given and conferred on him by the said Norfolk and Western Railway Company.

105 I do further certify that A. J. Hemphill, with whom I am personally acquainted, and to me known to be the secretary of said Norfolk and Western Railway Company, whose name is also signed to the foregoing certificate or writing, dated the 30th day of December, A. D. 1896, as hereinbefore referred to, has also this day personally appeared before me in my city, produced to me the said certificate or writing, and then and there acknowledged the same, and declared that, by the direction of Henry Fink, as president of said company, and under and pursuant to authority duly given and conferred by the said company, he has duly attested the same, and has signed his name to said attestation.

And on the same day personally came the said Henry Fink and the said A. J. Hemphill, each of whom, being duly and separately sworn, did depose and say that the said Henry Fink is the president of the said Norfolk and Western Railway Company, and the said A. J. Hemphill, is the secretary of the said company, described in the foregoing certificate or writing above, bearing date the 30th day of December, A. D. 1896, and producing before me the foregoing certificate or writing they then and there signed the same and acknowledged the same to be their voluntary act and deed and that of the said company; and did further say that they know the corporate name and seal of the said Norfolk and Western Railway Company; that the name and seal signed and affixed to the foregoing certificate or writing are such name and seal; that the said name was signed and said corporate seal was affixed to the foregoing certificate or writing by order and authority of the said company duly given and conferred; that they and each of them signed his name thereto by the like order and authority, as president and secretary thereof, and that they were duly authorized to execute and acknowledge the same on behalf of the said company.

106 Given under my hand and notarial seal, this thirtieth day of December, A. D. 1896.

[SEAL.] NEVELL S. GREENAWAY,
Notary Public for the City of Alexandria, State of Virginia.

STATE OF VIRGINIA, *City of Alexandria, To-wit:*

I, John S. Beach, Clerk of the Corporation Court of the city aforesaid (said court being a court of record), *Do Hereby Certify* that Nevell S. Greenaway, whose name is subscribed to the certificate of acknowledgment of the annexed instrument, and thereon written, was at the time of taking such acknowledgment, a Notary Public in and for said City of Alexandria, dwelling therein, commissioned and sworn, and duly authorized to take the same, and further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to the said certificate is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court, this 30th day of December, 1896.

[Seal Corporation Court, City of Alexandria, Virginia. Sic semper tyrannis.]

JOHN S. BEACH, *Clerk.*

107 OFFICE OF THE SECRETARY OF THE COMMONWEALTH AND KEEPER OF THE SEALS OF VIRGINIA.

RICHMOND, VA., *January 23d*, 1897.

COMMONWEALTH OF VIRGINIA:

I, J. T. Lawless, Secretary of the Commonwealth of Virginia, certify that the foregoing is a true copy of the certificate of the Norfolk and Western Railway Company, a corporation created by and existing under the laws of the State of Virginia, as therein mentioned, which certificate was duly filed in my said office the ninth day of January, 1897.

Given under my hand and the lesser seal of the Commonwealth, at Richmond, this 23d day of January, A. D. 1897.

[Seal Virginia Sic semper tyrannis.]

J. T. LAWLESS,
Secretary of the Commonwealth and Keeper of the Seals of Virginia.

COMMONWEALTH OF VIRGINIA:

I, Charles T. O'Ferrall, Governor of the Commonwealth of Virginia, certify that J. T. Lawless, whose name is signed to the within certificate of the Norfolk and Western Railway Company, bearing date the thirtieth day of December, 1896, is and was at the time of signing Secretary of the Commonwealth and Keeper of the Seals duly elected and qualified, that he is authorized by the laws of this State to make and sign such copy of certificate and that to all his

official acts full faith, credit and authority are due and ought to be given.

In Testimony Whereof, I have hereunto set my hand as Governor, and caused the Great Seal of the State to be affixed. Done at the City of Richmond, this twenty-third day of January, A. D. 1897, and in the 121st year of the Commonwealth.

[Seal Virginia Sic semper tyrannis. Perseverando.]

CHARLES T. O'FERRALL.

By the Governor:
J. T. LAWLESS,
Secretary of the Commonwealth and Keeper of the Seals.

108 STATE OF VIRGINIA:

Norfolk and Western Railway Company.

Supplemental Certificate.

Dated August 18th, 1897.

109 Whereas, The Norfolk and Western Railway Company, a corporation organized and existing under and pursuant to the Act of Assembly of the State of Virginia, approved January 15th, 1896, entitled:—

"An Act authorizing the purchasers of the railroads and property of the Norfolk and Western Railroad Company, sold by foreclosure of a deed of trust or mortgage thereon, to become and be a corporation, to adopt a name therefor, and to possess and exercise general and other powers."

did, in conformity to the requirements of Section 3 of said Act, execute its certificate in writing, under its common seal, attested by the signature of its president, referring to the sale by which it acquired title to such premises and the plan of organization adopted by the purchasers, the amount and classes or kinds of capital stock and mortgage bonds or other obligations authorized to be issued, and also specifying the name of such new corporation and its president, and the number and names of its directors, which certificate was duly filed in the office of the Secretary of the Commonwealth of Virginia on the ninth day of January, 1897;

And Whereas, In the plan of organization of the Norfolk and Western Railway Company referred to in said certificate, annexed thereto and made part thereof, it appears and is specified, *inter alia*, that

"The capital stock of said new corporation, the Norfolk and Western Railway Company, shall be $89,000,000.

"Such capital stock shall be issued of two classes or kinds, of which one class or kind shall be designated as 'Common Stock,' and shall consist of six hundred and sixty thousand shares of the par value of $100 each, amounting in the aggregate to $66,000,000, and the other

class or kind shall be designated as 'Adjustment Preferred Stock,' and shall consist of two hundred and thirty thousand shares of the par value of $100 each, amounting in the aggregate to $23,000,000;"

110 And whereas, Although in said third clause of said certificate it is stated, *inter alia*, that the amount and classes or kinds of capital stock are as specified in said plan of organization, an apparent clerical error subsequently occurs in said certificate, as will appear by reference thereto.

Now, therefore, The Norfolk and Western Railway Company, as supplementary to said certificate so filed and for the purpose of correcting the clerical error as aforesaid, does hereby confirm the declaration contained in said certificate, that "the amount and classes or kinds of capital stock and mortgage bonds and other obligations authorized to be issued by the Norfolk and Western Railway Company are as specified in said plan of organization," a copy of which is so annexed to said certificate and made part thereof, and does hereby also certify and declare as follows:

That the part of section third of said certificate referring to the amount and classes or kinds of capital stock as follows:

"Two hundred and thirty thousand shares of common stock and six hundred and sixty thousand shares of adjustment preferred stock, each share of such common stock and adjustment preferred stock being of the par value of $100 each, and the aggregate par value of such shares being $89,000,000. The preferences, conditions, and voting power of such common stock and adjustment preferred stock are as set forth in said plan of organization."

should, as specified in the plan of organization, be read and is hereby made to read:

"Two hundred and thirty thousand shares of adjustment preferred stock and six hundred and sixty thousand shares of common stock, each share of such adjustment preferred stock and common stock being of the par value of $100 each, and the aggregate par value of such shares being $89,000,000. The preferences, conditions, and voting power of such common stock and adjustment preferred stock are as set forth in said plan of organization."

In Witness Whereof, Said Norfolk and Western Railway Company has executed this certificate under and by its common

111 or corporate seal, attested by the signature of its president, this eighteenth day of August, 1897.

NORFOLK AND WESTERN RAILWAY COMPANY.

By HENRY FINK, *President*.

[Seal Norfolk & Western Railway Company, Virginia. Organized 1896.]

Attest:

A. J. HEMPHILL, *Secretary*.

STATE OF NEW YORK,
City and County of New York:

I, Charles T. Smith, a notary public for the city and State aforesaid, do certify that Henry Fink, with whom I am personally acquainted, and to me known to be the president of the Norfolk and Western Railway Company, whose name is signed to the foregoing certificate or writing of said Norfolk and Western Railway Company, dated the 18th day of August, A. D. 1897, has this day personally appeared before me in my city aforesaid, produced before me the said certificate or writing, and then and there acknowledged the same before me, in my city aforesaid, and has further acknowledged and declared that he executed the same as president of said Norfolk and Western Railway Company, and for and on behalf of said company as its and his voluntary act and deed for the purposes therein named, having, as such president, signed his name thereto and affixed the corporate seal of said company, and consented that the same might be filed or recorded; and that he has caused the same to be duly attested by A. J. Hemphill, the secretary of said company; all of which has been done by him under and pursuant to authority duly given and conferred on him by the said Norfolk and Western Railway Company.

I do further certify that A. J. Hemphill, with whom I am personally acquainted, and to me known to be the secretary of
112 said Norfolk and Western Railway Company, whose name is also signed to the foregoing certificate or writing, dated the 18th day of August, A. D. 1897, as hereinbefore referred to, has also this day personally appeared before me in my city, produced to me the said certificate or writing, and then and there acknowledged the same, and declared that, by the direction of Henry Fink, as president of said company, and under and pursuant to authority duly given and conferred by the said company, he has duly attested the same, and has signed his name to said attestation.

And on the same day personally came the said Henry Fink and the said A. J. Hemphill, each of whom, being duly and separately sworn, did depose and say that the said Henry Fink is the president of the said Norfolk and Western Railway Company, and the said A. J. Hemphill is the secretary of the said company, described in the foregoing certificate or writing above, bearing date the 18th day of August, A. D. 1897, and producing before me the foregoing certificate or writing they then and there signed the same and acknowledged the same to be their voluntary act and deed and that of the said company; and did further say that they know the corporate name and seal of the said Norfolk and Western Railway Company; that the name and seal signed and affixed to the foregoing certificate or writing are such name and seal; that the said name was signed and said corporate seal was affixed to the foregoing certificate or writing by order and authority of the said company duly given and conferred; that they and each of them signed his name thereto by the like order and authority, as president and secretary thereof, and that they

were duly authorized to execute and acknowledge the same on behalf of the said company.

Given under my hand and notarial seal, this 18th day of August, A. D. 1897.

[Seal Charles T. Smith, Notary Public, New York and Queens Co., N. Y.]

CHARLES T. SMITH,
Notary Public, Queens County.

Certificate filed in New York County.

113 STATE OF NEW YORK,
City and County of New York, ss:

I, Henry D. Purroy, clerk of the city and county of New York, and also clerk of the Supreme Court for the said city and county, being a court of record, do hereby certify that Charles T. Smith has filed in the clerk's office of the county of New York a certified copy of his appointment as notary public for the county of Queens, with his autograph signature, and was, at the time of taking the annexed deposition, duly authorized to take the same, and that I am well acquainted with the handwriting of said notary public, and verily believe that the signature to the annexed certificate is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said court and county, the 18th day of August, 1897.

[New York Seal.]

HENRY D. PURROY, *Clerk.*

114 OFFICE OF THE SECRETARY OF THE
COMMONWEALTH AND KEEPER OF THE
SEALS OF VIRGINIA

RICHMOND, VIRGINIA, *September 1st*, 1897.

COMMONWEALTH OF VIRGINIA:

I, J. T. Lawless, Secretary of the Commonwealth of Virginia, certify that the foregoing is a true copy of the certificate of the Norfolk and Western Railway Company, a corporation created by and existing under the laws of the State of Virginia, as therein mentioned, which certificate was duly filed in my said office the first day of September, 1897.

Given under my hand and the lesser seal of the Commonwealth, at Richmond, this first day of September, A. D. 1897.

[Virginia. *Sic Semper Tyrannis.*]

J. T. LAWLESS,
Secretary of the Commonwealth and
Keeper of the Seals of Virginia.

115 COMMONWEALTH OF VIRGINIA:

I, Charles T. O'Ferrall, Governor of the Commonwealth of Virginia, certify that J. T. Lawess, whose name is signed to the within certificate of the Norfolk and Western Railway Company, bearing date the 18th day of August, 1897, is, and was at the time of signing, Secretary of the Commonwealth and Keeper of the Seals duly elected and qualified; that he is authorized by the laws of this State to make and sign such copy of certificate, and that to all his official acts full faith, credit, and authority are due and ought to be given.

In Testimony Whereof, I have set my hand as Governor, and caused the Great Seal of the State to be affixed. Done at the City of Richmond, this first day of September, A. D. 1897, and in the 122d year of the Commonwealth.

[Virginia. *Sic Semper Tyrannis. Perseverando.*]

CHAS. T. O'FERRALL.

By the Governor:
J. T. LAWLESS,
Secretary of the Commonwealth and Keeper of the Seals.

116 "EXHIBIT B."

SEC. 155. *State Corporation Commission; how appointed; term of office; how vacancies filled; who ineligible; qualifications of at least one member; how removed or impeached; officers, how elected; rules of order and procedure; general provisions; salaries; election of members after January 1, 1908; how vacancies then filled.*

A permanent commission, to consist of three members, is hereby created, which shall be known as the State Corporation Commission. The commissioners shall be appointed by the Governor, subject to confirmation by the General Assembly in joint session, and their regular terms of office shall be six years, respectively, except those first appointed under this Constitution, of whom, one shall be appointed to hold office until the first day of February, nineteen hundred and four; one, until the first day of February, nineteen hundred and six, and one, until the first day of February, nineteen hundred and eight. Whenever a vacancy in the commission shall occur, the Governor shall forthwith appoint a qualified person to fill the same for the unexpired term, subject to confirmation by the General Assembly as aforesaid. Commissioners appointed for regular terms shall, at the beginning of the terms for which appointed, and those appointed to fill vacancies shall, immediately upon their appointments enter upon the duties of their office; but no person so appointed, either for a regular term, or to fill a vacancy, shall enter upon, or continue in, office after the General Assembly shall have refused to confirm his appointment or adjourn *sine die* without confirming the same, nor shall he be eligible for re-appointment to fill

the vacancy caused by such refusal or failure to confirm. No person,
while employed by, or holding any office in relation to, any
117 transportation or transmission company, or while in anywise
financially interested therein, or while engaged in practicing
law, shall hold office as a member of the said commission, or perform any of the duties thereof. At least one of the commissioners shall have the qualifications prescribed for judges of the Supreme Court of Appeals; and any commissioner may be impeached or removed in the manner provided for the impeachment or removal of the judge of said court. The commission shall annually elect one of their members chairman of the same, and shall have one clerk, one bailiff and such other clerks, officers, assistants and subordinates as may be provided by law, all of whom shall be appointed and subject to removal, by the commission. It shall prescribe its own rules of order and procedure, except so far as the same are specified in this Constitution or any amendment thereof. The General Assembly may establish within the department, and subject to the supervision and control, of the commission, subordinate divisions, or bureaus, of insurance, banking or other special branches of the business of that department. All sessions of the commission shall be public, and a permanent record shall be kept of all its judgments, rules, orders, findings and decisions, and all reports made to, or by it. Two of the commissioners shall constitute a quorum for the transaction of business, whether there be a vacancy in the commission or not. The commission shall keep its office open for business on every day except Sundays and legal holidays. Transportation companies shall at all times transport, free of charge, within this State, the members of said commission and its officers, or any of them, when engaged on their official duties. The General Assembly shall provide suitable quarters for the commission and funds for its lawful expenses, including pay for witnesses summoned, and costs of executing processes issued, by the commission of its own motion; and shall fix the salaries of the members, clerks, assistants and subordinates of the commission and provide for the payment thereof; but the salary
of each commissioner shall not be less than four thousand
118 dollars per annum. After the first day of January, nineteen
hundred and eight, the General Assembly may provide for the election of the members of the commission by the qualified voters of the State; in which event vacancies thereafter occurring shall be filled as hereinbefore provided, until the expiration of twenty days after the next general election, held not less than sixty days after the vacancy occurs, at which election the vacancy shall be filled for the residue of the unexpired term.

SEC. 156. *Powers, duties and method of procedure of Commission.*

(*a*) Subject to the provisions of this Constitution and to such requirements, rules and regulations as may be prescribed by law, the State Corporation Commission shall be the department of government through which shall be issued all charters and amendments or extensions thereof, for domestic corporations, and all licenses to do business in this State to foreign corporations; and through which shall be

carried out all the provisions of this Constitution, and of the laws made in pursuance thereof for the creation, visitation, supervision, regulation and control of corporations chartered by, or doing business in, this State. The Commission shall prescribe the forms of all reports which may be required of such corporations by this Constitution or by law; it shall collect, receive, and preserve such reports, and annually tabulate and publish them in statistical form; it shall have all the rights and powers of, and perform all the duties devolving upon, the Railroad Commissioner and the Board of Public Works, at the time this Constitution goes into effect, except so far as they are inconsistent with this Constitution, or may be hereafter abolished or changed by law.

(*b*) The Commission shall have the power and be charged with the duty, of supervising, regulating and controlling all transporta-
119 tion and transmission companies doing business in this State, in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses therein by such companies; and to that end the commission shall, from time to time, prescribe, and enforce against such companies, in the manner hereinafter authorized, such rates, charges, classification of traffic, and rules and regulations, and shall require them to establish and maintain all such public service, facilities and conveniences, as may be reasonable and just, which said rates, charges, classifications, rules, regulations and requirements, the commission may, from time to time, alter or amend. All rates, charges, classifications, rules and regulations adopted, or acted upon, by any such company, inconsistent with those prescribed by the commission, within the scope of its authority, shall be unlawful and void. The commission shall also have the right at all times to inspect the books and papers of all transportation and transmission companies doing business in this State, and to require from such companies, from time to time, special reports and statements under oath, concerning their business; it shall keep itself fully informed of the physical conditions of all the railroads of the State, as to the manner in which they are operated, with reference to the security and accommodation of the public, and shall, from time to time, make and enforce such requirements, rules and regulations as may be necessary to prevent unjust or unreasonable discriminations by any transportation or transmission company in favor of, or against, any person, locality, community, connecting line, or kind of traffic, in the matter of car service, train or boat schedule, efficiency of transportation or otherwise, in connection with the public duties of such company. Before the commission shall prescribe or fix any rate, charge, or classification of traffic, and before it shall make any order, rule, regulation or requirement directed against any one or more companies by name, the company or companies to be affected by such rate, charge, classification, order, rule, regulation or requirement shall first be given, by the commis-
120 sion, at least ten days' notice of the time and place, when and where the contemplated action in the premises will be considered and disposed of, and shall be afforded a reasonable opportunity to introduce evidence and to be heard thereon, to the end that

justice may be done, and shall have process to enforce the attendance of witnesses; and before the commission shall make or prescribe any general order, rule, regulation or requirement, not directed against specific company or companies by name, the contemplated general order, rule, regulation or requirement shall first be published in substance, not less than once a week for four consecutive weeks in one or more of the newspapers of general circulation published in the City of Richmond, Virginia, together with notice of the time and place, when and where the commission will hear any objections which may be urged by any person interested, against the proposed order, rule, regulation or requirement; and every such general order, rule, regulation or requirement, made by the commission shall be published at length for the time and in the manner above specified, before it shall go into effect, and shall also, as long as it remains in force, be published in each subsequent annual report of the commission. The authority of the commission (subject to review on appeal as hereinafter provided) to prescribe rates, charges and classifications of traffic, for transportation and transmission companies, shall be paramount; but its authority to prescribe any other rules, regulations or requirements for corporations or other persons shall be subject to the superior authority of the General Assembly to legislate thereon by general laws; provided, however, that nothing in this section shall impair the right which has heretofore been, or may hereafter be, conferred by law upon the authorities of any city, town or county to prescribe rules, regulations or rates of charge to be observed by any public service corporation in connection with any services performed by it under a municipal or county franchise granted by such city, town or county, so far as such services may be wholly within the limits of the city, town or county granting the franchise.

121 Upon the request of the parties interested, it shall be the duty of the commission, as far as possible, to effect by mediation, the adjustment of claims, and the settlement of controversies, between transportation or transmission companies and their patrons.

(*c*) In all matters pertaining to the public visitation, regulation or control of corporations, and within the jurisdiction of the commission, it shall have the powers and authority of a court of record, to administer oaths, to compel the attendance of witnesses and the production of papers, to punish for contempt any person guilty of disrespectful or disorderly conduct in the presence of the commission while in session and to enforce compliance with any of its lawful orders or requirements by adjudging, and enforcing by its own appropriate process, against the delinquent or offending company (after it shall have been first duly cited, proceeded against by due process of law before the commission sitting as a court, and afforded opportunity to introduce evidence and to be heard, as well against the validity, justness or reasonableness of the order or requirement alleged to have been violated, as against the liability of the company for the alleged violation), such fines or other penalties as may be prescribed or authorized by this Constitution or by law. The commission may be vested with such additional powers, and charged with such other duties (not inconsistent with this Constitution) as

may be prescribed by law, in connection with the visitation, regulation or control of corporations, or with the prescribing and enforcing of rates and charges to be observed in the conduct of any business where the State has the right to prescribe the rates and charges in connection therewith, or with the assessment of the property of corporations, or the appraisement of their franchise for taxation, or with the investigation of the subject of taxation generally. Any corporation failing or refusing to obey any valid order or requirement of the commission, within such reasonable time, not less than ten days, as shall be fixed in the order, may be fined by the commission (proceeding by due process of law as aforesaid) such
122 sum, not exceeding five hundred dollars, as the commission may deem proper, or such sum, in excess of five hundred dollars, as may be prescribed, or authorized by law; and each day's continuance of such failure or refusal after due service upon such corporation of the order or requirement of the commission, shall be a separate offense; provided, that should the operation of such order or requirement be suspended pending an appeal therefrom, the period of such suspension shall not be computed against the company in the matter of its liability to fines or penalties.

(*d*) From any action of the commission prescribing rates, charges or classifications of traffic, or affecting the train schedule of any transportation company, or requiring additional facilities, conveniences or public service of any transportation or transmission company, or refusing to approve a suspending bond, or requiring additional security thereon or an increase thereof, as provided for in subsection (*e*) of this section, an appeal (subject to such reasonable limitations as to time, regulations as to procedure and provisions as to costs, as may be prescribed by law) may be taken by the corporation whose rates, charges, or classifications or traffic, schedule facilities, conveniences or service, are affected, or by any person deeming himself aggrieved by such action, or (if allowed by law) by the commonwealth. Until otherwise provided by law, such appeal shall be taken in the manner in which appeals may be taken to the Supreme Court of Appeals from the inferior courts except that such an appeal shall be of right, and the Supreme Court of Appeals may provide by rule for proceedings in the matter of appeals any particular in which the existing rules of law are inapplicable. If such appeal be taken by the corporation whose rates, charges or classifications of traffic, schedules, facilities, conveniences or service are affected, the commonwealth shall be made the appellee; but, in the other case mentioned, the corporation so affected shall be made the appellee. The General Assembly may also, by general laws pro-
vide for appeals from any other action of the commission by
123 the commonwealth or by any person interested, irrespective of the amount involved. All appeals from the commission shall be to the Supreme Court of Appeals only; and in all appeals to which the commonwealth is a party, it shall be represented by the Attorney General or his legally appointed representatives. No court of this commonwealth (except the Supreme Court of Appeals, by way of appeals as herein authorized), shall have jurisdiction to re-

view, reverse, correct or annul any action of the commission, within the scope of its authority or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the commission in the performance of its official duties; provided, however, that the writs of madamus and prohibition shall lie from the Supreme Court of Appeals to the commission in all cases where such writs, respectively, would lie to any inferior tribunal or officer.

(*e*) Upon the granting of an appeal, a writ of *supersedeas* may be awarded by the Appellate Court, suspending the operation of the action appealed from until the final disposition of the appeal; but, prior to the final reversal thereof by the Appellate Court, no action of the commission prescribing or affecting the rates, charges, or classifications of traffic of any transportation or transmission company shall be delayed, or suspended, in its operation, by reason of any appeal by such corporation, or by reason of any proceedings resulting from such appeal, until a suspending bond shall first have been executed and filed with, and approved by, the commission (or approved on review by the Supreme Court of Appeals), payable to the commonwealth, and sufficient in amount and security to insure the prompt refunding by the appealing corporation to the parties entitled thereto, of all charges which such company may collect or receive, pending the appeal, in excess of those fixed, or authorized, by the final decision of the court on appeal. The commission, upon the execution of such bond, shall forthwith require the appealing company, under penalty of the immediate enforcement (pending the appeal and notwithstanding any *supersedeas*), of the order or requirement appealed from, to keep such accounts, and to
124 make to the commission, from time to time, such reports, verified by oath, as may, in the judgment of the commission, suffice to show the amounts being charged or received by the company, pending the appeal, in excess of the charge allowed by the action of the commission appealed from, together with the names and addresses of the persons to whom such overcharges will be refundable in case the charges made by the company pending the appeal be not sustained on such appeal; and the commission shall also, from time to time, require such company, under like penalty, to give additional security on, or to increase, the said suspending bond, whenever, in the opinion of the commission, the same may be necessary to insure the prompt refunding of the overcharges aforesaid. Upon the final decision of such appeal, all amounts which the appealing company may have collected, pending the appeal, in excess of that authorized by such final decision, shall be promptly refunded by the company to the parties entitled thereto, in such manner, and through such methods of distribution as may be prescribed by the commission, or by law. All such appeals affecting rates, charges or classification of traffic, shall have precedence upon the docket of the Appellate Court, and shall be heard and disposed of promptly by the court, irrespective of its place of session, next after the *habeas corpus*, and Commonwealth's cases already on the docket of the court.

(*f*) In no case of appeal from the commission shall any rule or additional evidence be introduced in the Appellate Court; but the

chairman of the commission, under the seal of the commission shall certify to the Appellate Court all the facts upon which the action appealed from was based and which may be essential for the proper decision of the appeal, together with such of the evidence introduced before, or considered by, the commission as may be selected, specified and required to be certified, by any party in interest, as well as such other evidence, so introduced or considered, as the commission may deem proper to certify. The commission shall, when-
125 ever an appeal is taken therefrom, file with the record of the case, and as a part thereof, a written statement of the reasons upon which the action appealed from was based, and such statement shall be read and considered by the Appellate Court, upon disposing of the appeal. The Appellate Court shall have jurisdiction, on such appeal, to consider and determine the reasonableness and justice of the action of the commission appealed from, as well as any other matter arising under such appeal: provided, however, that the action of the commission appealed from shall be regarded as *prima facie* just, reasonable and correct; but the court may, when it deems necessary, in the interests of justice, remand to the commission any case pending on appeal, and require the same to be further investigated by the commission, and reported upon to the court (together with a certificate of such additional evidence as may be tendered before the commission by any party in interest), before the appeal is finally decided.

(*g*) Whenever the court, upon appeal, shall reverse an order of the commission affecting the rates, charges or the classification of traffic of any transportation or transmission company, it shall, at the same time, substitute therefor such order as, in its opinion, the commission should have made at the time of entering the order appealed from; otherwise, the reversal order shall not be valid. Such substituted order shall have the same force and effect (and none other) as if it had been entered by the commission at the time the original order appealed from was entered. The right of the commission to prescribe and enforce rates, charges, classifications, rules and regulations, affecting any or all actions of the commission theretofore entered by it and appealed from, but based upon circumstances or conditions different from those existing at the time the order apealed from was made, shall not be suspended or impaired by reason of the pendency of such appeal; but no order of the commission prescribing or altering such rates, charges, classifications, rules, or regulations, shall be retroactive.

126 (*h*) The right of any person to institute and prosecute in the ordinary courts of justice, any action, suit, or motion against any transportation or transmission company, for any claim or cause of action against such company, shall not be extinguished or impaired, by reason of any fine or other penalty which the commission may impose, or be authorized to impose, upon such company because of its breach of any public duty, or because of its failure to comply with any order or requirement of the commission; but, in no such proceeding by any person against such corporation, nor in any collateral proceeding, shall the reasonableness, justness

or validity of any rate, charge, classification of traffic, rule, regulation or requirement, theretofore prescribed by the commission, within the scope of its authority, and then in force, be questioned; provided, however, that no case based upon or involving any order of the commission shall be heard, or disposed of, against the objection of either party, so long as such order is suspended in its operation by an order of the Supreme Court of Appeals is authorized by this Constitution or by any law passed in pursuance thereof.

(*i*) The commission shall make annual reports to the Governor of its proceedings, in which reports it shall recommend, from time to time, such new or additional legislation in reference to its powers or duties, or to the creation, supervision, regulation, or control of corporations, or to the subject of taxation, as it may deem wise or expedient, or as may be required by law.

(*j*) (No sub-div. "*j*" in official copy).

(*k*) Upon the organization of the State Corporation Commission, the Board of Public Works and the office of Railroad Commissioner shall cease to exist, and all books, papers and documents pertaining thereto, shall be transferred to, and become a part of the records of, the office of the State Corporation Commission.

(*l*) After the first day of January, nineteen hundred and five, in addition to the modes of amendment provided for in Article XV of this Constitution, the General Assembly, upon the recommendation of the State Corporation Commission, may, by law, from time to time, amend sub-sections (*a*) to (*i*), inclusive, of this section, or any of them, or any such amendment thereof; provided, that no amendment made under authority of this sub-section shall contravene the provisions of any part of this Constitution other than the sub-sections last above referred to or any such amendment thereof.

127

128 EXHIBIT C.

Before the State Corporation Commission of Virginia.

In the matter of the proposed order of the State Corporation Commission in respect to prescribing a maximum rate or charge of two cents (2c) per mile for the transportation of passengers over the lines of any railroad company operated by steam in the State of Virginia.

This respondent, the Norfolk and Western Railway Company, respectfully represents to the honorable State Corporation Commission of Virginia that it is a corporation operating a steam railroad in the State of Virginia, and that its principal office is in the City of Roanoke, in said State.

Respondent further represents that this honorable Commission has caused to be published in the Richmond "Times-Despatch," a newspaper published in the City of Richmond, Virginia, the following notice:

"Office of The State Corporation Commission.

RICHMOND, VA., *21st Day of July*, 1906.

To the Several Steam Railroad Companies Doing Business in Virginia, and all Persons Interested:

"Take notice that the State Corporation Commission will, in the City of Richmond, on Thursday, the first day of November, 1906, at 12 o'clock noon, in accordance with authority conferred by
129 the Constitution of Virginia and the statutes enacted by the General Assembly of Virginia pursuant thereto, hear and consider any objections which may be urged against a rule, regulation, order or requirement of the Commission, fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers over the line of any railroad company in this State, operated by steam, between points within the State of Virginia, said maximum rate to be observed whether the transportation be entirely over the line of one railroad company, or joint transportation over the lines of two or more companies; and whether the contract for transportation of a passenger or passengers be evidenced by an ordinary ticket between stations, by a mileage book or otherwise; the commission to have, as authorized by law, the power and authority, from time to time, and as often as circumstances may require, to change or revise the rate, or by rules, regulations, and requirements to provide for the more convenient and expeditious putting into effect and proper observance of said maximum rate. At the said hearing and consideration of the said maximum rate of two cents per mile, the method, time and extent of promulgating and putting into effect the same will be heard and determined by the Commission, to the end that a maximum rate for passenger transportation may be put into effect and be made applicable to all steam railroad companies doing business in Virginia, and be properly observed by them in the transportation of passengers.

BEVERLEY T. CRUMP, *Chairman;*
H. C. STUART,
JOSEPH E. WILLARD,
Commissioners."

130 This respondent, now, on this 1st day of November, 1906, appears and respectfully shows the following causes against the rule, regulation, order and requirement in said notice mentioned and proposed:

First. This respondent respectfully shows that the proposed order, regulation and requirement, and the action of this honorable Commission in the premises, are based upon certain public enactments by the people of the State of Virginia in convention assembled, as from sections 155 and 156 of the Constitution of Virginia, herewith filed as a part of this answer and marked "Appendix No. I," to which special reference is hereby made, will fully and at length appear; and this respondent now respectfully shows that the said provisions in the Constitution of the State of Virginia seek to confer upon this honorable Commission administrative, executive, legisla-

tive and judicial powers and functions in respect to the same matter, and, as applied and proposed to be applied to this respondent and to its property in the premises, do not constitute due process of law, nor afford to this respondent the equal protection of the laws, within the meaning of the Fourteenth Amendment of the Constitution of the United States.

This respondent further and additionally pleads and shows that Section Five of the Bill of Rights of Virginia, which, in the Constitution of that State, is declared to be "the basis and foundation of government," provides as follows:

"That the legislative, executive, and judicial departments of the State should be separate and distinct;"

and the Thirty-ninth Section of the Constitution of Virginia provides:

"Except as hereinafter provided, the legislative, executive, and judiciary departments shall be separate and distinct, so that
131 neither exercise the powers properly belonging to either of the others, nor any person exercise the power of more than one of them at the same time."

The single exception alluded to in Section Thirty-nine of said Constitution embraces matters relating to the performance by transportation and transmission companies of their public duties and their charges therefor, in regard to which alone the separation of the legislative, executive and judicial departments is, by the Constitution of Virginia, denied.

While, therefore, for the protection of every other interest in Virginia, a legislative body is created by the Constitution and laws of that State which is subject to the primary limitation and restraint of a different and independent judicial tribunal, and a judicial tribunal is provided which is not clothed with legislative and executive functions in respect to the matters in which it is required to exercise its judicial functions, and, therefore, by the law of its creation is capable of judicial consideration and judicial action in respect to them, this, by the Constitutional system of Virginia, is denied to transportation and transmission companies in respect to controversies arising about their public duties and their charges therefor. In respect to these, this honorable Commission has been established by the Constitution, which seeks to impose, and, if valid, does impose upon the Commission the duty or invest it with the power, of instituting proceedings before itself in respect to the public duties of transportation and transmission companies and their charges therefor, without any other party complainant except the Commission itself, of legislating thereon and making rules and orders in respect thereto, after the proceedings have been thus instituted before it by itself; of enforcing, as a court, compliance with the orders or requirements which it has made in the matters thus brought before it and thus legislated or ruled upon, and of adjudging or enforcing against the defendants, the fines and penalties prescribed or authorized by the Constitution or by law.

This respondent respectfully submits that this honor-
132 able Commission, by the law of its creation, is thus, and is otherwise, as will appear from the said Constitution, made incapable of the judicial consideration and action in respect to the large interests above mentioned of transportation and transmission companies which due process of law requires; and, in the knowledge that it has power, as a judicial tribunal, to pass upon the validity of its acts in the other capacities referred to, it is put in a position of freedom from the usual and necessary restraints of legislative bodies in respect to matters about which it may legislate. In subjecting these large interests to a tribunal thus created, and denying to them the primary protection of judicial tribunals which are not clothed with legislative, administrative and executive functions in respect to matters in which they are called upon to exercise their judicial functions, such as are provided for every other interest in the State by the Constitution and laws of Virginia, and in subjecting them to the legislative power of this tribunal, unlimited and unchecked by the ordinary and orderly primary responsibility to an independent judicial tribunal, the said Constitution not only does not constitute, in respect to transportation and transmission companies, due process of law, but it likewise denies to them the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States, which provides that no State shall deprive any person of his property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

And this respondent respectfully prays the benefit and protection of the said Fourteenth Amendment to the Constitution of the United States in respect to the proposed order, regulation and requirement of this honorable Commission in this case.

Second. This respondent, for further cause why no order, rule or regulation should be put into effect fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers over its lines of railroad in this State,
133 respectfully shows that it is a railroad company duly chartered and organized and doing business under the laws of the State of Virginia approved January 15th, 1896, entitled "An Act authorizing the purchasers of the railroad and property of the Norfolk and Western Railroad Company, sold by foreclosure of a deed of trust or mortgage thereon, to become and be a corporation, to adopt a name therefor and to possess and exercise general and other powers; that the organization of the Norfolk and Western Railway Company under and pursuant to the said Act of Assembly and the laws of Virginia was made on or about September 24th, 1896, as will more fully appear by reference to the certificate dated December 30th, 1896, filed on the 9th day of January, 1897, and the supplemental certificate dated August 18th, 1897, filed on the first day of September, 1897, in the office of the Secretary of the Commonwealth of Virginia, and by reference to the Act of Assembly of Virginia in effect February 17th, 1900, entitled "An Act to authorize the Board of Directors of the Norfolk and Western Railway Company to locate, construct or purchase certain branches," to which Acts

of Assembly and Certificates reference is hereby made as if fully set forth herein, and it is prayed that the same may be read and considered as a part of this answer.

Respondent further says that, at the time of its incorporation as aforesaid, there were in existence in the State of Virginia, entering into and forming a part of its charter, certain public laws of the State of Virginia which had theretofore been passed and which have been enacted into the Act commonly known as the "Code of Virginia of 1887, namely: Sections 1202, 1240, and 1242 thereof; and this respondent shows that said Sections were inducements for it to accept its charter and to organize into a corporation and to do business as above set forth; and the same were accepted by it and entered into and became a part of the contract between it and the State of Virginia.

Relying upon its said charter and the said public laws above
134 referred to, this respondent caused itself to be organized and made, and also issued and caused to be sold its bonds and stocks to the amount of many millions of dollars; and the purchasers of the same, in making their investments in the said bonds and stocks of this respondent, also relied upon said contractual obligations which existed between this respondent and the State of Virginia; and this respondent has, in all respects, adjusted its affairs and conducted its business in reliance upon its said contract with the State of Virginia.

While the General Assembly of Virginia, in enacting the said public laws above referred to, reserved the right to alter, modify and repeal the charters of any railroad company governed thereby, it expressly excepted from such right of alteration, modification or repeal the power to change the tolls of this respondent without its assent, as follows:

"Except that no law shall be passed for taking from a company its works or property without making to it just compensation, or for changing its tolls without its assent in any other cases except such as are specially provided in its charter."

and thereby secured to this respondent, as a contractual right with the State of Virginia, the right to charge, receive and collect the tolls as fixed and established and permitted in such public acts.

This respondent denies that any of the events have happened which satisfy the condition precedent, established by the said Statute, to the exercise of any right on the part of the State of Virginia to change the tolls of this respondent without its assent; and likewise denies that any exceptional case has arisen or exists except as specially provided for in the chapter last herein referred to. The net proceeds of this respondent have never amounted to a sum equal to its capital stock with six per cent. interest thereon; its net profits have never been such that dividends might be declared out of the same exceeding or as much as the rate of fifteen per centum per annum on the capital invested.

135 This respondent has not, since the passage of an act of the General Assembly of the State of Virginia, entitled "An Act Concerning Corporations," which became a law on the 21st day of

May, in the year 1903, either purchased, merged or consolidated with itself any railroad competitive with it between points both of which are in the State of Virginia, nor has it, since the passage of the last mentioned act, accepted or effected any amendment to, or, of, its charter thereunder, and it expressly avers that it has never at any time, nor does it now, assent to any change in its tolls or rates, and it has not in any way waived or lost the right guaranteed to it by the said contract with the State of Virginia in respect to its tolls.

On the contrary this respondent insists that it is entitled to the benefit of Paragraph One of Section Ten of Article One of the Constitution of the United States, which prohibits a State from passing any law impairing the obligation of a contract, and submits that, inasmuch as the State of Virginia can not take action having this effect, it is not within the power of this honorable Commission, organized and existing under the laws of the State of Virginia, and exercising in that regard the power of the State in the premises, to impair the obligations of the contract hereinbefore set forth by the adoption of the proposed rule, regulation, order or requirement of this honorable Commission, fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers over its line of railroad in the State of Virginia, which materially changes the rates and tolls of this respondent as they at present exist, and this respondent prays that it may have in the premises the full benefit of the provisions of the Constitution of the United States hereinbefore referred to for the preservation of its contractual rights in respect to its rates and tolls.

Third. This respondent, for further cause why no order,
136 rule or regulation should be put into effect fixing and prescribing a maximum rate or charge of two cents per mile for the transportation of passengers over its line of railroad in this State, respectfully shows that, under and by virtue of its charter granted by the State of Virginia, it not only owns and operates lines of railroad in the State of Virginia, but also in the States of Maryland, West Virginia, North Carolina and Ohio, and does, in addition to an intra-state passenger business in the State of Virginia, a large inter-state business in said State and in all of the other states above mentioned; and that the proposed regulation of its passenger fares would necessarily result in the disturbance and regulation of the inter-state passenger fares of this respondent.

This respondent respectfully shows that, under the Constitution of the United States, Article One, Section Eight, Paragraph Three, Congress alone has power to regulate commerce between the States, and this respondent avers that the adoption of the said proposed rule or regulation reducing its rates and charges for passenger service to two cents a mile in the State of Virginia would necessarily disturb and regulate its inter-state passenger traffic and commerce to such an extent as to come within the purview of the above mentioned clause of the Federal Constitution, the benefit and protection of which clause this respondent now invokes.

Fourth. This respondent, as a further cause against the entry of said proposed order, rule or regulation, respectfully shows that the

effect of said reduction in its passenger fares, rates and charges would be to deprive this respondent of its property without just compensation and without due process of law, and to deprive it of the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States, the benefit and protection of which this respondent respectfully claims, as will appear from the consideration hereinafter set forth.

137 Respondent respectfully represents that the regular existing passenger rate upon its line of railroad in Virginia is three cents per mile and that, from time to time, in order to accommodate the public and to induce travel upon its railway, it causes to be issued various tickets known as mileage books, summer excursion tickets, convention rates and other classes of tickets which are sold under particular conditions and at rates substantially lower than its regular tariff; and that such rates are not higher than is just and reasonable whether considered in respect to the value of the property used in the service rendered and the cost thereof, or in respect to the value of the service rendered to the passenger.

This respondent further shows that the effect of the said proposed reduction in its passenger rates, under the rule or regulation proposed to be put into effect by this honorable Commission, upon the business of this respondent between points both of which are in the State of Virginia and in which transportation the passenger does not pass out of the State of Virginia en route, for the year ending June 30th, 1905, which is fairly representative of the general effect upon the business of this respondent in other years, is as follows:

The gross earnings of this respondent from its intra-state passenger traffic in Virginia were.....	$1,322,958.56
Deduct from this sum the ordinary operating expenses incident to this service, which is not less than 63.9 per cent. of such gross earnings.....	845,370.52
Leaving earnings from operation.....	$477,588.04

Your respondent, however, avers that this sum which it earned can not properly be treated as net earnings resulting from its passenger service in the State of Virginia because respondent has, in addition to the ordinary expenses paid by it as incidentals to its passenger service, to pay to the State of Virginia large sums of money for taxes and also, from year to year, has to pay large sums of money

138 for extraordinary costs of operation, which it sometimes calls betterments, but which are not proper subjects of capitalization, and the passenger service of this respondent should bear its proper burden of these two items of cost and respondent further avers that the proper proportion to be borne by its intra-state passenger service is that proportion of its taxes and extraordinary operating expenses or betterments, as the gross earnings of its intra-state passenger service bears to the entire gross earnings in the State of Virginia resulting from both its inter-state and intra-state passenger and freight earnings; and respondent now avers that the gross amount of its entire passenger earnings in the State of Virginia for

the year mentioned was the sum of $2,277,938.27, and that the gross amount of its entire freight earnings for the same year was the sum of $11,767,349.09, making a total earning of both classes of its business, freight and passenger, and including its inter-state and intra-state earnings, of the sum of $14,045,287.36; and that the percentage of its gross earnings derived from its intra-state passenger service is 9.42 per cent. of the total earnings of respondent in the State of Virginia, and the amount of earnings hereinabove set forth are subject to further deductions of the proper proportion of taxes and betterments as above stated:

Maximum earnings, after deducting ordinary operating expenses.....		$477,588.04
Deduct proper proportion of taxes, which is 9.42 per cent. of the entire taxes paid to the State of Virginia.....	$41,181.31	
Deduct proper proportion of betterments, which is 9.42 per cent. of the entire amount paid for betterments in Virginia	$79,237.81	
		$120,419.12
Leaving a balance of.....		$357,168.92

139 From the result of the foregoing analysis of the intra-state passenger business of this respondent in the State of Virginia for the year ending June 30th, 1905, respondent avers that the only net earnings that it received which could be devoted by it for the purpose of paying interest upon its bonded indebtedness and upon its outstanding stock obligations, was the sum of $357,169.92.

Respondent now avers that the amount of the capital of this Company embarked in its business in Virginia of all sorts is $92,116,892.00. This total may be shown, among other methods, by allotting, on a mileage basis, that proportion of its bonded indebtedness and capital stock applying to and supported by the property in Virginia according to the market value of such securities as of the 30th day of June, 1905, which value has not substantially changed up to the time of the filing of this answer; and that, distributing said capital on the basis of the proportion that the gross earnings from intra-state passenger service bears to the entire gross earnings of the State, there is ascertained that this respondent has invested for the purpose of earning said passenger receipts the sum of $8,677,411.22. The net earnings from said passenger service in Virginia amounts to a return of *four and one-tenth per cent.* upon the capital invested.

Respondent further avers that, since the publishing of the proposed order reducing its passenger fares to two cents a mile, it has caused an investigation to be made as to the result that said order would have had upon its revenue derived from intra-state passenger service in the State of Virginia for the year ending June 30th, 1905, and has ascertained that had such proposed reduction been in effect during that year the gross earnings it would have received from its passenger service in the State of Virginia would have been reduced by the sum of $277,714.12 and that the net earnings of this re-

spondent from its intra-state passenger service in the State of Virginia, instead of being the sum of $357,168.92 would have
140 been the sum of $79,454.80, which sum would have represented a return upon the capital invested in the conduct of this class of respondent's business of *nine-tenths of one per cent.*, a sum utterly insufficient even to discharge the proper proportion of the interest upon the mortgage obligations of respondent and would yield no return whatsoever upon the stock of respondent:

Wherefore, this respondent shows that the result of the said proposed reduction of its passenger fares would be to deprive this respondent of its property without just compensation; to deprive it of the equal protection of the laws; and to take its property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States, the benefit and protection of which it respectfully invokes.

Fifth. For further cause against the proposed reduction of its passenger rates, this respondent shows that much of the territory through which its lines of railway run is sparsely inhabited, and that it is already providing for the convenience and benefit of the public a double daily service and in other sections as many as four and five trains are operated daily in each direction, yet the great majority of its passenger trains are run with comparatively few passengers thereon and at great expense as compared to the revenue resulting therefrom; and that the decrease of its rate for passenger service will not, under the conditions that exist in Virginia, cause such an increase in the amount of passengers to be carried as would, in any way, approximate the loss that would be suffered by this respondent as the result of the radical reduction in its passenger fares as contemplated in said proposed order, rule and regulation.

Respondent says that its present rates are not higher than a reasonable compensation for the service rendered by it to its passengers and are in no sense excessive or extortionate, and respondent is advised that it has, as an incident to its property and as a property right, the right to charge for this service which it renders a reasonable compensation; and this respondent is protected by the
141 Fourteenth Amendment to the Constitution of the United States in making, receiving and collecting the rates and fares which it is now charging for its passenger service.

Sixth. For further cause against the proposed reduction of its passenger rates, this respondent shows that there are now pending before this honorable Commission certain proceedings commonly known as the Virginia Classification and Rate Case, the foundation of which was a rule issued against the railroads of the State of Virginia to show cause why a certain proposed uniform classification for the State of Virginia and Rate Sheet thereto attached should not be adopted as the Classification for freight in the State of Virginia with the rates and charges as shown on the rate sheet attached thereto.

This respondent has heretofore filed its answer in said proceeding whereby it was shown that the adoption and promulgation of said Classification and Rate Sheet attached thereto would result in a substantial reduction of the revenues of this respondent from its freight

business in the State of Virginia; and, as a matter properly to be considered in response to the proposed rule or regulation reducing the passenger fares of this respondent to two cents, it now proceeds to show this Commission the effect that would result to its revenues had the reduction in its freight and passenger revenues been in effect for the year ending June 30th, 1905, as proposed in the Virginia Classification and Rate Case, as well as the present proposed rule or regulation in respect to its passenger tariff, respondent respectfully avers as follows:

The gross earnings of this respondent from its intra-state freight business in Virginia for the year ending June 30th, 1905, were	$1,142,927.27	
The gross earnings of this respondent from its intra-state passenger business in Virginia for the year ending June 30, 1905, were	1,322,958.56	
		$2,465,885.83
142 Deduct from this sum the ordinary operating expenses incident to the freight service which is not less than 86.5 per cent. of such gross earnings, or	$988,632.08	
Also deduct from this sum the ordinary operating expenses incident to the passenger service, which is not less than 63.9 per cent. of such gross earnings, or	845,370.52	
Total expenses		$1,834,002.60
Leaving earnings from the operation of the Virginia Freight and Passenger service of		$631,883.23

Respondent, however, avers that this sum can not properly be treated as net earnings resulting from its Freight and Passenger service in the State of Virginia, because, as hereinbefore set forth, it is necessary and proper for each of said classes of service to bear its proper proportion of taxes and extraordinary expenses of betterments; and respondent avers that the proper proportion that said service should bear of said taxes and betterments is: as the proportion of gross earnings derived from each of said classes of business bears to the entire gross earnings of respondent in the State of Virginia.

Respondent now avers that the entire gross earnings of respondent in the State of Virginia, including its inter-state and intra-state earnings, both freight and passenger, for the year ending June 30th, 1905, was $14,045,287.36, and that the percentage of gross earnings derived from its intra-state freight service is 8.14 per cent.; and the percentage of its gross earnings derived from its intra-state pas-

senger service is 9.42 per cent. of the total earnings of respondent in the State of Virginia; and, therefore, the amount of earn-
143 ings hereinabove stated is subject to further deduction according to the above proportion on account of taxes and extraordinary expenses or betterments, as follows:

Maximum earnings after deducting ordinary operating expenses		$631,883.23
Deduct proper proportion for taxes on freight service	$35,585.55	
Deduct proper proporition for betterments of freight service	68,470.89	
Deduct proper proportion for taxes on passenger services	41,181.31	
Deduct proper proportion for betterments of passenger service	79,237.81	
		224,475.56
Leaving net earnings from combined intra-state freight and passenger business in Virginia		$407,407.67

From the foregoing analysis of the combined intra-state freight and passenger business of this respondent in the State of Virginia for the year ending June 30th, 1905, this respondent avers that the only net earnings that it received which could be devoted by it for the purpose of paying interest upon its bonded indebtedness and its outstanding stock obligation was the sum of $407,407.67.

As heretofore shown, however, this respondent has embarked in its business in Virginia of all sorts a capital of $92,116,892.00; and that, distributing said capital on the basis of the proportion that the gross earnings from the combined intra-state freight and passenger earnings bears to the entire gross earnings of the State, there is ascertained that this respondent has invested, for the purpose of earning said freight and passenger receipts, the sum of $16,175,726.23, upon which the net earnings from its Virginia intra-state freight and passenger service amounted to a return only of *two and five-tenths per cent.*

Respondent further avers, however, that had the Virginia
144 Classification and Rate Sheet been in effect for the year ending June 30th, 1905, as heretofore shown to this honorable Commission, its revenues would have been reduced by the sum of $91,000.00; and, as heretofore shown, had the proposed reduction in its passenger fares been in effect, its revenues would have been reduced by the sum of $277,714.12; and, deducting these two items of loss from the net earnings of this respondent, amounting to $407,407.67, would have left the sum of $38,693.55 as the entire net earnings of this respondent from its combined intra-state freight and passenger business in the State of Virginia for said year.

To this sum, however, should be added the sum of $910.00 and the sum of $2,777.14, aggregating $3,687.14, which were the sums paid to the State of Virginia as franchise tax upon the gross earnings of this respondent for the year 1905 and which sums would not have been paid had the earnings been reduced by the application

of the reduced rates; and, adding this sum of $3,687.14 to the net earnings of this respondent from the two classes of service, there is found to be the sum of $42,380.69 as the actual net earnings that this respondent would have received from said two classes of service, and which sum would have amounted to a return of *twenty-six hundredths of one per cent.* upon the capital invested in the intra-state freight and passenger business in the State of Virginia.

Seventh. This respondent, having heretofore shown the results of the conduct of its intra-state freight and passenger business in Virginia under its existing rates and schedules of charges and having also shown the effect upon said revenue under the proposed reductions in both its freight and passenger tariffs, which showings have been upon the basis of the amount of capital embarked by this respondent in the State of Virginia, calculated upon the basis of the market value of its stocks and bonds as of the date of the 30th day of June, 1905, now sets forth to this honorable Commission
145 the returns that this respondent has received upon its capital invested under the conditions as they now exist and what such returns would be under the conditions proposed by this Commission with the reduced rates contemplated, basing said returns on the assessed value of the property of this respondent used in Virginia in its business.

Your respondent avers that the physical property of this Company in the State of Virginia was, for the year 1905, assessed at the sum of $21,317,426.00, and that the amount of income tax paid by respondent to the State of Virginia was the sum of $136,996.95, which, capitalized at the rate of thirty-five cents upon the one hundred dollars would produce a valuation equal to an assessment of $39,141,886.00, aggregating a total valuation of $60,459,312.00.

(*a*) Respondent further avers that its gross earnings from its intra-state freight business for the year ending June 30th, 1905, was the sum of $1,142,927.00, which was 8.14 per cent. of the gross earnings of this respondent from all of its business in Virginia for the year ending June 30th, 1905, and that, after deducting from said earnings the proper proportion of expenses, taxes and betterments, the net earnings derived by this respondent from its intra-state freight business was the sum of $50,238.75.

And respondent avers that, appropriating 8.14 per cent. of its capital employed in Virginia as ascertained by the assessed valuation of its property in Virginia, it will be perceived that $4,921,388.00 is the amount of capital used in earning its net intra-state freight revenue in the State of Virginia; and, on this sum, the net earnings of this respondent in the State of Virginia represents only a return of *one and two-hundredths per cent.*

Had, however, the proposed Virginia Classification and Rate Sheet been in effect whereby the earnings of this respondent would have been diminished by the sum of $91,000.00, there would have been no sum left to this Company to be appropriated to earn-
146 ings upon its capital, but, as a matter of fact, there would have been a deficit of $40,761.00.

(*b*) Respondent further avers that its gross earnings from intra-

state passenger business for the year ending June 30th, 1905, was the sum of $1,322,958.56, which was 9.42 per cent. of the gross earnings of this respondent from all of its business in Virginia, for the year ending June 30th, 1905, and that after deducting from said earnings the proper proportion of expenses, taxes and betterments the net earnings derived by this respondent from its intra-state passenger business was the sum of $357,168.92.

And respondent avers that, appropriating 9.42 per cent. of its capital employed in Virginia as ascertained by the assessed valuation of its property in Virginia, it will be perceived that $5,695,267.00 is the amount of capital used in earning this net intra-state passenger revenue; and, on this sum, the net earnings of this Company in the State of Virginia represents only a return of *six and three-tenths per cent.*

Had, however, the proposed reduction of respondent's passenger fares to two cents a mile been in effect, whereby the earnings of this respondent would have been diminished by the sum of $277,714.12, there would have been left to this Company the sum of $79,454.80, which sum would represent a return upon the investment devoted to this class of service in Virginia of only *one and four-tenths per cent.*

(*c*) Respondent further avers that the entire gross revenue of this respondent from its intra-state freight and passenger business in Virginia for the year ending June 30th, 1905, was the sum of $2,465,885.83; and that, after deducting therefrom the ordinary and extraordinary operating expenses, as well as taxes, the net revenue derived from said business which could properly be devoted to paying returns upon the capital invested was the sum of $407,407.67.

That the gross revenues of this class of business represented 17.56 per cent. of the gross revenues of this Company from all business done in the State of Virginia and that, appropriating 17.56 per cent. of the capital employed by this Company in its business in the State of Virginia as represented by the assessed valuation of the properties used by this Company in its business in Virginia, it is ascertained that $10,616,655.00 was used in earning said net revenues from its intra-state freight and passenger business in Virginia, and that said returns amount to only *three and eight-tenths per cent.* upon the capital invested as above ascertained.

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In the event, however, that the Virginia Classification and Rate Sheet, as well as the proposed order reducing the passenger fares to two cents a mile had been in effect, the net revenues of this respondent from its intra-state freight and passenger business in Virginia would have been reduced from $407,407.67 to $38,693.55, to which sum should be added, however, the sum of $3,687.14, which was the sum paid as franchise tax upon gross earnings of this respondent for the year 1905, which sum would not have been paid had the earnings been reduced by the application of the proposed rates whereby it is perceived that, under the proposed reductions, the net revenue of this Company from its intra-state freight and passenger business in the State of Virginia would have only amounted to the sum of $42,380.69, which represents a return of *four tenths of one per cent.* upon the capital invested in earning this net revenue, based upon the

valuation put upon the property of this respondent by the State of Virginia for purposes of taxation.

This respondent does not admit that the tax valuation of its properties represents the true value of its investment upon which it is entitled to have a return; but for the purposes of this case, has exhibited the effect of the proposed reduction upon its revenues in order that it may be made plain that such proposed reductions would result in a confiscation of the property of respondent.

Eighth. In submitting the foregoing statements, together with the results of the operation of its passenger service in Virginia, respondent calls attention to the fact that it has given to said service
148 the benefit of its earnings from its mail and express business, although respondent claims that upon a proper consideration of the conditions in connection with this service the earnings from its mail and express can not be taken into account in any proceeding which contemplates, as its result, the reduction of the rates and fares which it charges for passenger service.

Wherefore the Norfolk and Western Railway Company now respectfully submits that its passenger rates, fares and charges, as they now exist, are fair, just and reasonable and that the reductions therein proposed to be promulgated by this honorable Commission are unjust and unreasonable and that to promulgate the proposed rule, regulation, order or requirement of the Commission fixing and charging a maximum rate of two cents per mile for the transportation of passengers, would be confiscatory and would deprive this respondent of its property without due process of law, would take its property without just compensation, would deny to it the equal protection of the laws, would be a regulation of commerce between the states and would impair the obligation of the contract which now exists between this respondent and the State of Virginia; and, therefore, for the reasons hereinabove set forth, the Norfolk and Western Railway Company respectfully submits that the said proposed rule, regulation, order or requirement prescribing a maximum rate of two cents per mile for the transportation of passengers as set forth in said notice bearing date the first day of August, 1906, should not be promulgated or put into effect by this honorable Commission.

Now, having fully answered said notice or rule, this respondent prays to be hence dismissed with its reasonable costs.

NORFOLK AND WESTERN RAILWAY COMPANY.

The above answer was duly signed and Sworn to.

149 "EXHIBIT D."

SEC. 1202. *Rates of Toll on Railroads.*—On a railroad on which different rates are not prescribed by law, the following rates of toll may be charged for transportation, to-wit: Of a person and his baggage within a hundred and fifty pounds, not exceeding six cents per mile; of produce and other articles, except gypsum, lime, guano, and other specific manures, not exceeding eight cents per ton per

mile; and gypsum, lime, guano, and other specific manures, not exceeding four cents per ton of twenty-two hundred and forty pounds per mile; and for the transportation of any person, or of any produce or other articles for a distance less than ten miles, a charge may be made at the foregoing rates as for ten miles. And where articles weigh less than four pounds to the cubic foot, a toll may nevertheless be charged on each cubic foot as for four pounds weight. And when the articles in any one consignment weigh less than one hundred pounds a toll may be charged on the same as for one hundred pounds weight. If for the transportation of any person with his baggage, or for any consignment, the whole charge at the rates before mentioned would be less than twenty-five cents, the same may nevertheless be charged as a minimum. For the weighing, storage, and delivery of articles at any depot or warehouse of the company, a charge may also be made not exceeding the ordinary warehouse rates charged in the city or town in which, or nearest to which, the depot or warehouse is situated.

SEC. 1240. *Amendment or Repeal of Charters of Certain Companies.*—The charter of every company which is governed by the act passed on the eleventh day of March, eighteen hundred and thirty-seven, prescribing certain general regulations for the incorporation of railroad companies, and of every company heretofore or hereafter incorporated, which shall be governed by this chapter may, be altered, modified, or repealed by any future legislature as may seem to it proper, except that no law shall be passed for taking from a company its works or property without making to it just compensation, or for changing its tolls without its assent, in any other cases than such as are specially provided for in this chapter.

SEC. 1242. *Regulations as to Dividends.*—When the net profits of any company heretofore or hereafter incorporated, which may be governed by this chapter, shall be such that, but for this section, dividends might be declared out of the said profits exceeding the rate of fifteen *per centum per annum* on the capital stock invested, laws may be passed for reducing the tolls of the company. But no law shall reduce the tolls so as to prevent dividends of fifteen *per centum per annum*, within thirty years from the time the first dividend or profits of the said company was declared, or so as to prevent dividends of twelve *per centum per annum* after the said thirty years and before fifty years from the same time, or so as to prevent dividends of ten *per centum per annum* after the said fifty years.

151 *Affidavit of Joseph W. Coxe on Behalf of Complainant.*

Filed May 15th, 1907.

In the Circuit Court of the United States for the Eastern District of Virginia. In Equity.

NORFOLK AND WESTERN RAILWAY COMPANY, Complainant,
v.
BEVERLEY T. CRUMP ET ALS., Defendants.

UNITED STATES OF AMERICA,
State of Virginia, City of Richmond, To wit:

Joseph W. Coxe, a witness of lawful age, being duly sworn deposes and says as follows:

1. That for the past twenty-seven years he has been engaged in the Accounting Department of the Norfolk and Western Railway Company and its predecessors in title, having held the positions of Auditor of Receipts for the Shenandoah Valley Railroad Company, now owned and operated by the Norfolk and Western Railway Company, Auditor of the Norfolk and Western Railroad Company and its successor the Norfolk and Western Railway Company, subsequently General Auditor of the Norfolk and Western Railway Company and from 1905 up to the present date he has been the Comptroller of said Norfolk and Western Railway Company, and as such the head of its Accounting Department.

2. That at the time a rule was served upon the Norfolk and Western Railway Company at the instance of the said Corporation Commission of Virginia, for said Company to show cause why a maximum two cent rate should not be established as the maximum rate for passenger fares in the State of Virginia, he was called upon to furnish to said Commission a statement of the earnings, costs and expenses incident to the passenger service of the Norfolk and Western Railway Company in Virginia.

That at the time said request was made, on or about the 1st day of September, 1906, the latest operating year of the Company
152 available at that time, was that of the fiscal year ending the thirtieth day of June, 1905. Affiant says that the purpose of his investigation was to ascertain the actual net earnings that the said Railway Company derived from its intrastate passenger business in Virginia.

3. In making up the account of operation and cost of various classes of service conducted by the Norfolk and Western Railway Company, it has been the practice of the Company for a number of years to separate the earnings and expenses of its freight and passenger departments. This separation so far as earnings are concerned can be and is made with accuracy. So far, however, as ascertaining the cost of conducting each class of said service it is well known that a considerable portion of certain expenses are applicable and would be chargeable jointly to the two accounts, but for the purpose of making

a reasonable separation of the cost of said classes of service the Company has inaugurated a system of accounting involving items of account to which cost charges are allotted amounting to ninety-five in number. And affiant has been able to separate forty per cent. of said costs with reasonable accuracy. As to twenty-five per cent. of said charges, affiant is able to separate the same between the two classes of service with reasonable accuracy with the aid and assistance of the Operating Department of the Railway Company. As to the remainder of said costs and charges amounting to thirty-five per cent. of the total, affiant has no means of separating the items with certainty, but has adopted the passenger train and freight engine mileage as the unit of cost upon which those classes of charges are divided between the two classes of service.

4. According to the division of expenses ascertained in the manner above set forth, this, affiant ascertained in the usual course of his accounting, that the passenger business of the Norfolk and Western Railway Company in the State of Virginia, was done at the expenditure of not less than the sum of fifty-seven and eight-tenths cents in earning one dollar of revenue, and this minimum amount having been ascertained, the next problem that confronted the affiant was to ascertain whether or not its intrastate Virginia passen-
153 ger business was done at an expense equal to or greater or less than the entire passenger business in Virginia.

The passenger expenses of each operating division were summarized for the entire year ending June 30th, 1905. The passenger train mileage made on each operating division was determined for the same period, and by dividing the total passenger expenses on each division by the total passenger train mileage on each division, an average cost per passenger train mile on each division was determined The mileage of passenger trains on each division was summarized according to the character of the train into local and through trains, and the total mileage of each train multiplied by the cost per mile was used to determine the cost of each of those trains.

The final result of this affiant's investigation was to show, that in order to earn one dollar of revenue by the trains of the Norfolk and Western Railway Company associated and identified with the intrastate passenger service in Virginia, the cost was not less than 63.9 cents. These results I believe are reasonably accurate and fairly represent the condition on the Norfolk and Western Railway in regard to the minimum cost of doing its Virginia intrastate passenger business.

The effect of this excess cost upon the intrastate passenger revenue and the slight return upon the capital invested in that class of business, is set forth in the answer of the Norfolk and Western Railway Company filed before the State Corporation Commission, and which is a part of the bill filed in this cause and in addition thereto the depressing effect upon said revenue, had the two cent maximum passenger rate been in effect, is also set forth in detail.

5. Since the answer of the Norfolk and Western Railway Company was filed before said Commission, another operating year of the company has expired, to-wit, the year ending June 30th, 1906, and this affiant has caused the same investigation to be made of the revenues

for this latter year, and the results are set forth in the bill of the Norfolk and Western Railway Company filed in this cause.

154 In making up the statement for the year ending June 30th, 1906, this affiant has assumed that the cost of doing the intrastate passenger service for this year has been the same relative cost for doing said business, as for the year ending June 30th, 1905, that is to say, that said business has been done at the expenditure of not less than 63.9 cents in earning $1.00 of revenue. In making this statement, however, it is proper to state that the revenue of the Norfolk and Western Railway passenger trains for the year ending June 30th, 1906, as shown in said bill have been greater than they were in the year ending June 30th, 1905, and it may be that the expenses have not grown in exactly the same ratio, but without having had the opportunity, as yet, of making out the final figures in that respect, this affiant believes and avers that whatever difference may exist will be immaterial in the final result, and that as affecting the return upon the revenue invested in that class of business will under the best conditions, only carry the return on capital a small fraction of one per cent. over the revenue as shown by carrying out the net earnings for the year ending June 30th, 1906, on the basis of the ratio of expenses for the year ending June 30th, 1905.

6. Affiant further states that before the passenger rate case of the Norfolk and Western Railway Company was finally submitted to the State Corporation Commission, he had ascertained that the cost of doing business by the said Railway Company was largely increased by reason of the increase cost of labor and material incident to the transaction of the business of the Company, and on or about the 29th day of March, 1907, he prepared and submitted to said Commission an affidavit stating the general conditions in respect to said increase-cost, a copy of which affidavit is hereto attached and made a part of this affidavit.

7. Affiant also states that the facts and figures set forth in said bill in regard to the earnings of the Norfolk and Western Railway Company during the years ending June 30th 1905 and 1906, and the expenses and other matters incident thereto, as also set forth, including the amount of taxes paid to the State of Virginia and

155 its counties and municipalities were all made up under the supervision and direction of affiant and from the records of his office.

8. Affiant also files herewith a printed statement showing the operation of the Norfolk and Western Railway Company from a financial standpoint which is a continuation of the statement, which is a part of his affidavit filed with the State Corporation Commission and herewith filed, by which it will appear that by reason of the great increase in the cost of operation and supplies necessary for the conduct of said railroad, the net earnings of this Company have still further decreased and are from month to month still decreasing. Affiant also states that the figures in the said bill giving the total mileage and the division by States of the mileage of the railroads of the lines of railroad operated by the Norfolk and Western Railway Company, were made up under his supervision and direction from the

records in his office, and affiant attaches hereto a map showing the location of the lines of railroad of the Norfolk and Western Railway Company through the various States through which it operates.

JOS. W. COXE.

Sworn and Subscribed before me in the City of Richmond Virginia, this 14th day of May, 1907.

[Tax on Seal exempt by Law 7 I.C.]

F. L. CRUTCHFIELD,
Notary Public.

My Commission expires Febr'y 3, 1911.

156 Form Compt. 22.

Norfolk and Western Railway Company.

ROANOKE, VA., *May 1st*, 1907.

Statement of Earnings and Expenses for Month of March, 1907.

	1907.	1906.	Inc. or dec. in 1907.	
Miles operated.....	1876	1848	Increase 28.	
Earnings.				
Passenger, Mail and Express.....	$370,196.48	$313,704.90	Inc.,	$56,491.58—18 per ct.
Freight.....	2,407,258.24	2,234,314.56	Inc.,	172,943.68— 8 per ct.
Total Earnings..	$2,777,454.72	$2,548,019.46	Inc.,	$229,435.26— 9 per ct.
Operating Expenses.				
Maintenance of Way and Structures.....	$306,539.24	$262,644.66	Inc.,	$43,894.58
Maintenance of equipment.....	481,305.33	452,141.56	Inc.,	29,163.77
Conducting Transportation.....	935,432.41	743,350.92	Inc.,	192,081.49
General Expenses.....	50,481.58	45,270.00	Inc.,	5,211.58
Total Expenses..	$1,773,758.56	$1,503,407.14	Inc.,	$270,351.42—18 per ct.
Net earnings.....	$1,003,696.16	$1,044,612.32	Dec.,	$40,916.16— 4 per ct.
Deduct Fixed Charges and Taxes.....	401,873 33	353,873.32	Inc.,	48,000 01
Surplus.....	$601,822.83	$690,739.00	Dec.,	$88,916.17
Proportion of Expenses to Gross Earnings...	64 per cent.	59 per cent.		